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THE YEAR THAT WAS 1982.

By

DR. S. VENKATARAMAN, B.A., M.L., LL.D.

Introduction.—To votaries of law and history the events of each year are meaningful. To the common man one year follows another in much the same way. Art Buchwald, hummourist that he is, would describe the process thus:

> "Who is next? What is your name"?
>
> Nineteeneightytwo"
>
> "Reason for leaving the job"?
>
> "I was replaced by a New Year."

The human mind is, however, prone to look upon each expiring year as good or bad, bountiful or calamitous, one to remember or one to abhor, in the light of the happenings and trends during the year. The Soviet astronomers spoke of the expiring year as the "year of seven eclipses", a rare phenomenon which according to them was not likely to be repeated before 2206[1]. In India it was the year of "productivity". To Sir Michael Walker, Chairman of the Festival of India Trust, it was the "Year of India in Britain", the festival constituting a great landmark in the centuries of association between India and England indicative of the emergence of India as a contemporary country, "an enormous forward-looking developing country, and a leader in many aspects of technology and science"[2] To the Indian scientist, 1982 was, by and large, a year to remember and feel proud of. The landing of an Indian scientific expedition on the Antartica on 9th January, was acclaimed as a magnificent New Year gift to the country placing it on a par with the three or four other highly scientifically advanced countries of the world like the U.S., U.K., France and Germany. The successful launching of INSAT I was also a great technical feat though it failed to achieve fully its object due to some technical snag. Be that as it may, the total situation both at home and abroad as revealed by the occurrences during the year is not one to bring cheer to the average man.

The world moves but does not progress.—It is said that history can be an intractable wench going her own way without regard to the paths we have envisioned for her. Two States, one geographically not big and the other positively small in size have been consistently blackmailing the world and defying world opinion over the years. The Union of South Africa has been practising apartheid for more than half a century and nothing has been able to stop it. Israel, a frankly religious and racial State, with an almost total identification in nationhood of almost a single racial and religious group which no doubt had been subjected to some of the most terrible physical pressure in all history has embodied a high degree of xenophobia. Surrounded by Moslem States whose people profess to stand united by their own religious loyalty and fervour and hatred of the Jewish State, Israel had, in the recent past, proved more than a match for them. Twice they fought and twice the latter were vanquished. Encouraged by this and counting on the powerful support of the influential Jewish lobby in the U.S. Congress and Administration Israel embarked upon a blatant act of aggression devastating large chunks of South Lebanon in an attempt to exterminate the entire Palestinian liberation forces culminating in the cold-blooded massacre of unarmed Palestinian refugees—men, women and children, in Beirut, an unparalleled act of genocide reminiscent, of the

1. The Hindu, 12th July, 1982.
2. *Ibid.*, 25th December, 1981.

worst days of Hitler' concentration camps and the mass extermintaion of Jews. The Resolutions adopted by the U.N. Assembly and the Security Council in this behalf were rejected out of hand by Israel and the so-called "sovereign nations" of the world have become helpless spectators and at no time has the U.N. in its history presented such a pathetic and helpless appearance as on this matter. The West Europeans are passing through a phase of moral and emotional convulsions in the aftermath of the Beirut massacre. Israel has an abnormal relationship with most of the West European Christian countries, a relationship not based like any normal relationship between two countries on mutual advantage and obligation but one in which the Christian nations of the West generally and West Germany in particular because of its sense of guilt is under obligation to provide Israel with moral and material support and can expect nothing in return. Whatever heart-searchings the Western European nations are passing through there is no question but that the whole Beirut episode is a blot on civilisation. More than forty years have passed since the days of Hitler. Knowledge has made astonishing progress. Wisdom however has not advanced and men could still be primitive. Toynbee's reflection that though man has achieved mastery over nature he has not acquired mastery over himself remains wholly true. Verily the world has moved but has not progressed.

Maddening Armament Race and Perils to Humanity from Nuclear Confrontation.—All talk about disarmament and world peace during the year has been only tall talk. The wars raging in the Persian Gulf area, the Argentine adventure into the Falkland Islands (Malvinas) making Diego Garcia into a nuclear base etc., have demonstrated once again the hollowness of what is being preached. Grim warnings about the perils which humanity will be facing from a nuclear confrontation or even conventional wars arising from the intensification of the armament race are being sounded from time to time but none that counts seems to be heeding them with any degree of sincerity. At the second special session of the U.N. General Assembly, on 7th June, Mr. Javier Pirez de Cuellar, the Secretary-General of the U.N. observed: "Apocalypse is today not merely a biblical depiction but it has become a very real possibility. Never before in human experience have we been placed on the narrow edge between catastrophe and survival. The world currently possessed a destructive capacity equivalent to more than one million Hiroshima bombs. One single submarine equipped with nuclear warheads is estimated to have more explosive power than what was used during the entire period of the Second World War. Although disarmament discussions have been proceeding for many years the armament race in conventional and nuclear spheres has been rising. From 200 billion dollars ten years ago the world millitary budgets have gone up to 600 billion dollars. The nuclear weapon States, especially the two super-powers are engaged in building stockpiles of sophisticated nuclear arms. Weapons of terrifying destructiveness are piled up at an increasing tempo and new ones are being added to them. New regions of the globe have been drawn into the frantic competition for increased armaments. The arms race today extends into the oceans of the world and into outer space. In fact it is ironic that the accumulation of arms is one of the few expanding industries in a period of economic depression and gloom. We spend more than one million dollars a minute on the arms race in a world where 40,000 children in the developing countries die every day. Since 1945 no nuclear bomb has been used in military action but the world has experienced the agonies of well over a hundred years fought with conventional weapons. Some five lakhs of scientists all over the world are devoting their knowledge to the search for weaponry more and more sophisticated and deadly. The stockpile of nuclear weapons accumulated by the world's nuclear powers has now reached 50,080 containing over one million times the power of the Hiroshima bomb. The stockpile represents the equivalent of 3.5 tonnes of TNT for every person on earth. According to a Study, "World military and Social expenditures" 1982[3], the world's nuclear weapons stockpile is said to be equivalent to 16 million tonnes of TNT. In World War II three million tons of ammunition were expended and

3. Washington Announcement, 12th October, 1982.

40 to 50 million people died. In 32 countries today Governments spend more for military purposes than for education and health care combined. The NATO and the Warsaw Pact forces between them have 100000 tanks, enough to form a column from Paris to Budapest. The Report states that the U.S. and the Soviet Union representing 11% of the world's population have spearheaded and shaped the global military competition. To national Governments which cannot command the sophisticated weapons in the hands of the super powers, sovereignty is an illusion. Hence many national Governments spend colossal sums from their gross national incomes to get control of such weapons and leave the people wallowing in their poverty. It is becoming a never-ending quest. The more they endeavour to come abreast of the super-powers the further the super-powers have advanced in the arms race. The super-powers sell their obsolete weapons at fantastic prices to the less developed nations and keep their own arsenals up to date. In keeping with this, it is said that the Regan Administration has decided that any military air craft sold to its major third world clients must be less capable than its own Air Force's planes. There are at least eleven third world countries which consistently buy American equipment—Turkey, Egypt, Jordan, Malaysia, the Philipines, Thailand, Indonesia, Bahrain, Oman, Saudi Arabia and the United Arab Emirates. As was observed by the Nobel Laureate, Mrs. Alva Myrdal "there is a climate of despair that is being forced on the youth of today by the ever-present threat of nuclear war". It is however clear that despair should never stop crusaders in the cause of world peace from working for disarmament.

A little glow in a sombre sky: Sea Law Convention adopted.—The enoromous value of sea bed resources as a replacement for the steadily depleting resources being obtained from *terra firma* in all its aspects has been discussed in the previous annual reviews. Ending eight years of labour the Law of the Sea Conference adopted by an overwhelming majority on 30th April a comprehensive international convention. Under the treaty, India receives the status of "pioneer investor" and becomes the only developing country to be accorded the recognition. France, Japan, the Soviet Union and four consortia of industrialised States are the others recognised as pioneers. The status will enable India to undertake deep sea-bed mining for mineral-rich polymetallic sulphides in a site to be determined in the Indian Ocean. It has to sign the treaty and spend 30 million dollars prior to 1st January, 1983, to qualify for the mining rights.

The 320 clause treaty hailed as the most comprehensive international convention declares a 20 kilometre limit as the territorial sea of a coastal State and 320 kilometres as the exclusive economic zone. It guarantees innocent passage through territorial seas and narrow straits. An international sea-bed authority is to be set up in Jamaica to deal with all matters concerning deep sea-bed mining. Under a "parallel system" envisaged by the treaty the participating State must provide a matching site it chooses for itself to be assigned for mining by the Enterprise, the mining-arm of the sea-bed authority. Industrialised States are obligated to share their technology with the Enterprise—an issue of contention still between the U.S. and the developing countries. The U.S. President, Mr. Raegan has announced that the U.S., will not sign the international Law of the Sea Treaty[4].

Decision of the Year.—The decision of the Supreme Court in *S. P. Gupta* v. *Union of India*[5], referred to familiarly as the Judges' Appointment and Transfer cases, is a momentous decision of the year. As to why it is so, one need not say as old Kaspar said to young Peterkin[6]:

"Why, that I cannot tell,
But 'twas a famous victory".

It is a momentous decision not because of the bulk of the judgments—475 pages in A.I.R. Volume and 726 pages in S.C.C. volume, not because every one of the seven learned Judges wrote his own separate judgment, not because the arguments of counsel extended over weeks or the debates at times tended to be stormy and emotional, not because on every one of the main issues raised it was a majority decision of 4 to 3 but because of its real importance in regard to shaping the

4. The Hindu, 12th July, 1982.
5. A.I.R. 1982 S.C. 149.
6. Southey. After Blenheim.

future. The decision has evoked mixed reactions. Mr. V. R. Krishna Iyer has acclaimed it as a 'historic' judgment[7]. Mr. Shiv Shankar, then Law Minister, referred to it as the best New Year gift and a vindication of the correctness of the Union Government's policy and action. At the other end there was the pungent criticism that the decision "has sealed the fate of the independence of the judiciary and offered a *carte blanche* to the executive to hire, fire and toss around like shuttlecock the men in robes"[8]. It is always open to argument that the Court has done too little or too much. The law laid down, even if it be by a slender majority of one, on the issues raised is nevertheless the law of the land. In passing it may be remarked that the impression left by some earlier decisions of the Supreme Court of tensions among Judges is not dispelled by the judgments in this case. Another criticism is that the judgments have thrown open more issues than had been raised[7]. Be that as it may, there are a number of valuable points emerging from the seven judgments which have been elucidated in the columns of this Journal by *Neetigna*[9]. Particularly noteworthy are the enlargement of the scope of *locus standi* in promoting public interest litigation on healthy lines by persons having sufficient interest in a public cause and acting *bona fide;* the high-lighting of the importance of open Government through its order to disclose the documents exchanged between the Chief Justice of India, the Union Law Minister and the Chief Justice of the Dehli High Court in connection with the extension or confirmation of two additional Judges and transfer of a Chief Justice from one High Court to another and the underlining of the importance of the rule of law and independence of the judiciary Both Justices Bhagwati and Fazl Ali have pointedly stated that independence of the judiciary is a basic feature of the Constitution (Paras. 27, 320[10]). Justice Fazl Ali stresses that independence of the judiciary comprises two fundamental and indispensable elements, namely independence of the judiciary as an organ, as one of the three functionaries of the State and independence of the individual Judge (Para. 334). Bhagwati, J., points out that the concept of independence of the judiciary is not limited to independence from executive pressure or influence only but includes independence from many other pressures and from prejudices acquired and nourished by the class to which the Judges belong (Para. 27). Justice Desai adds that it is not as if judicial independence is an absolute thing like a brooding omnipresence (Para. 710) but that the independence of the judiciary has to be interpreted within the framework and parameters of the Constitution (Para. 709). Presumably as an implication of such independence under the Constitution, Justice Bhagwati states that the judiciary must become an active participant in the judicial process "ready to use law in the service of social justice through a pro-active goal-oriented approach (Para. 27). As regards privilege against disclosure of certain documents by Government, Justice Bhagwati stated that the concept of an open Government stems from "the right to know" implicit in the right of free speech and expression in Article 19 (1) (*a*); therefore, disclosure of information in regard to the functioning of government must be the rule and secrecy an exception justified only when the strictest requirement of public interest so demands and the Court must attenuate the area of secrecy as much as possible consistently with the requirement of public interest. The learned Judge has further said that openness in government does not mean openness merely in the functioning of the executive arm of the State; the same openness must characterise the maintenance of the judicial apparatus including judicial appointments and transfers. With due respect this looks more like the statement of an ideal, rather than a practical proposition. For one thing the term 'public interest' is not a simple concept and the Judge's approach is bound to be quite different from that of an

7. Speech on 9th February, 1982 at Round Table Discussions under the auspices of the United Lawyers Association and the Institute of Socialist Legal Studies at New Delhi by Mr. V. R. Krishna Iyer.

8. *See* India Today, 31st January, 1982, page 60.

9. (1982) 2 M.L.J. (Journal) page 5.

10. The references are to Paras in the S.C.C. report.

administration. Persons charged with providing confidential information may be disinclined to do so in writing. A trenchant criticism against the denial of privilege and allowing disclosure of the correspondence between the Union Government, the State Government, the Chief Justice of India and the Chief Justice of the High Court regarding the extension or appointment of additional Judges was made by Fazl Ali, J.: "The documents in this case pertain to high official secrets revealed in the documents of high constitutional functionaries regarding matters which, if disclosed, would doubtless cause serious injury to the public and has in fact caused the most colossal damage not only to the Government but also to the judicial institution itself". (Para. 474). He observed again: 'Carried away by the stormy and emotional debate of the lawyers appearing for the petitioners and their egotistic slogan that independence of judiciary was in danger, this Court ought not to have broken the age-old solid and sacrosanct tradition of upholding the plea of privilege which caused serious injury to the public interest. But lo, and behold! the result of the disclosure has revealed widespread dangers and ills, for anybody in the streets without appreciating the niceties of law looks upon the judiciary as suspect". (Para. 521).

Judicial activism forges ahead.—Mr. Hidayatullah, the Vice-President of India, in his Raja Ramdeo Anandilal Poder Memorial Lecture on Problems of Administration has deprecated the idea of reforming society through Court judgments and criticised the action of some Judges in this direction creating difficulties for other departments of the Government as in the judgments which sought to reform jails, family relations, industrial laws, etc.[11]. Such criticism notwithstanding, judicial activism has been able to keep up its tempo. *Maneka Gandhi's case*[12], had created a sort of due process holding that procedure to meet the test of Article 21 must be reasonable, fair and just, that any procedure will not do, that it must satisfy the test of reasonableness and that such a concept runs like a golden thread through the entire fabric of the Constitution. In the Bihar Under-trial Prisoners' case, the Supreme Court held that legal aid to an indigent accused in a criminal trial is a fundamental right evolving the right by a process of creative interpretation. It also read "speedy trial" as part of the fundamental right under Article 21. It held that for ensuring such trial the Court could direct the State, if necessary, to set up more Courts, appoint more Judges, provide greater facilities etc., for making speedy trial a reality[13]. In *Khatri* v. *State of Bihar*[14], while reiterating the position, the Supreme Court observed: "It is unfortunate that though this Court declared the right to legal aid as a fundamental right of an accused person by a process of judicial construction of Article 21, most of the States.... have not taken note of this decision and provided free legal services to a person accused of an offence. We regret this disregard of the decision of the highest Court in the land by many of the States despite the constitutional declaration in Article 141, that the law declared by this Court shall be binding throughout the territory of India". In the Judges' Appointment and Transfer case[15], Bhagwati, J., remarks that in regard to a society like ours "pulsating with urges of gender justice, worker justice, minorities justice, *dalit* justice and equal justice between chronic unequals" for the judiciary to become "an active participant in the judicial process ready to use the law in the service of social justice through a pro-active goal-oriented approach", it is necessary "to have Judges who are prepared to fashion tools, forge new methods, innovate new strategies and evolve a new jurisprudence, who are judicial statesmen with a social vision and a creative faculty and who have, above all, a deep sense of commitment to the Constitution with an activist approach and obligation for accountability ......to the half-hungry millions of India who are continually denied their basic human rights". With respect, this can remain for long only an ideal. It is a moot question whether any, and if so, how many Judges would measure up to these requirements. Judicial activism can therefore be only a prolonged process. As it is, according to Justice Bhagwati, by judicial activism the Court has brought the enforcement of fundamental rights within the reach of the weaker sections and the Court

11. The Hindu, 6th April, 1981.
12. A.I.R. 1978 S.C. 597.

13. See *Hussainara Khatoon* v. *Home Secretary,* (1979) 2 S.C.J. 519, 524, 533-534.
14. (1981) 2 S.C.J. 586.
15. *S. P. Gupta* v. *Union of India,* 1981 S.C.C. (Supp.) 87, para. 27.

has evolved a "new doctrine" which has "now ultimately been recognised judicially as a rule of law in regard to *locus standi*"[16]. In a recent manifestation of judicial activism the Supreme Court has ruled that workers who are paid less than what they are entitled to under the Minimum Wages Act also come under the concept of "forced labour", that the meaning of "forced labour" was not limited to only those compelled to work under physical threats with or without payment and that the force could be also financial[17].

Locus standi *and public interest litigation.*— The decision of the Supreme Court in the Judges Appointment and Transfer case[18], is claimed to be a *locus classicus* on the subject of *locus standi* in public interest litigation[16]. This is presumably because of the liberalisation of the scope of the doctrine of standing by imaginative interpretation so as to advance social justice, and by giving it form and shape. The law is, according to Hobbes[19], the public conscience. And it is a time-honoured maxim that every wrong has a remedy (*ubi jus ibi remedium*). It followed that the person suffering wrong, the aggrieved person, can sue in respect of it. He alone was considered to have a "standing" in that behalf. The early rule as to "standing" required that the applicant for judicial redress must have suffered a legal wrong or injury to entitle him to maintain an action for such redress[20]. The rule is of ancient vintage laid down at a time when private law dominated the legal arena and public law was yet to develop. Gradually a number of exceptions to the rule fell to be recognised from the very nature of things. Thus a ratepayer of a local authority was accorded "standing" to challenge an alleged illegal action of the local authority[21]. Likewise a person entitled to participate in proceeding relating to the decision making process resulting in the impugned decision was held competent to maintain an action to challenge the decision[22]. Statutes also recognised at times the *locus standi* of an applicant to maintain an action though no legal right or protected interest of his has been violated and injury caused to him[23]. Yet again where the person suffering legal wrong or legal injury is unable to approach the Court due to some disability or it is not practicable for him to move the Court for sufficient reason such as socially or economically backward position, another person was allowed to invoke the assistance of the Court for providing redress to the injured person[24].

In *Municipal Council, Ratlam* v. *Vardichand*[25], the Supreme Court upheld the right of the residents of a certain locality in Ratlam to adopt proceedings under section 133, Criminal Procedure Code against the municipal council compelling it to provide certain basic amenities like sanitary facilities on the roads, public conveniences for slum dwellers who were using the road for the purpose, and to abate nuisance by constructing drain pipes with flow of water to wash the filth and stop the stench. Justice Krishna Iyer set the issue thus: "If the centre of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of *locus standi* to the community orientation of public interest litigation these issues must be considered........ The key question we have to answer is whether by affirmative action a Court can compel a statutory body to carry out its duty to the community by constructing sanitation facilities at great cost and on a time-bound basis. At issue is the coming of age of that branch of public law bearing on community action and

16. Justice Bhagwati Talks to Dina Vakil, Indian Express, Sunday Edition, dated 31st January, 1982.

17. The Hindu, dated 18th September, 1982.

18. 1981 S.C.C. (Supp.) 87.

19. Leviathan, Ch. 29.

20. Ex parte *Sidebotham,* 14 Ch.D. 453 (C.A.); In re *Read Bowen & Co*, Ex parte *Official Receiver,* 19 Q.B.D. 174 (C.A.).

21. *Ramadas Shenoy* v. *Chief Officer,* A.I.R. 1974 S.C. 2177; *Varadarajan* v. *Salem Municipal Council,* (1972) 2 M.L.J. 485: A.I.R. 1973 Mad. 55.

22. *Queen* v. *Bowan,* (1898) 1 Q. B. 663.

23. *J. M. Desai* v. *Rosan Kumar,* A.I.R. 1976 S.C. 578; *Municipal Council, Ratlam* v. *Vardichand,* A.I.R. 1980 S.C. 1622.

24. *U. S.* v. *Raines,* (1960) 362 U.S. 17; *Atwood* v. *Merryweather,* (1867) 37 L.J. Ch. 35; *Durayappa* v. *Fernando,* (1967) 2 A.C. 337: (1967) 2 All E.R. 152 (P.C.). 337: (1962) 2 All E.R. 152 (P.C.).

25. A.I.R. 1980 S.C. 1622.

the Court's power to force public bodies to implement specific plans in response to public grievances". In the *Fertiliser Corporation Kamgar Union case*[1], the question arose whether the workers in a factory owned by Government can challenge the legality and|or the validity of the sale of certain plants and equipments by the management. The Court held, on the facts, that the sale was not unjust, unfair, or *mala fide* and went on to state "we are not too sure if we would have refused relief to the workers if we had found that the sale was unjust, unfair or *mala fide*". Speaking for the Court, Chandrachud, CJ., observed: "The maintainability of a writ petition which is correlated to the existence and violation of a fundamental right is not always to be confused with the locus to bring a proceeding under Article 32..... The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But in an appropriate case it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding be it under Article 226 or under Article 32 of the Constitution. If public property is dissipated, it would require a strong argument to convince the Court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations". "Public enterprises are owned by the people and those who run them are accountable to the people. The accountability of the public sector to the Parliament is ineffective because the Parliamentary control of public enterprises is 'diffuse and haphazard'." The *raison d'etre* for liberalising the rule as to *locus standi* is also apparent from the observations of Lord Diplock in *Reg* v. *Inland Revenue Commissioners*[2]; "it would ....be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped..... It is not ...... a sufficient answer, to say that judicial review of the actions of officers or department of Central Government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a Court of justice for the lawfulness of what they do, and of that the Court is the only judge". Again in a country like ours liberalisation of *locus standi* is needed for the purpose of bringing about socio-economic changes. The liberalising proces has been active and purposefully used in *Sunil Batra* v. *Delhi Administration*[3], where the Supreme Court accepted a *habeas corpus* petition of a person complaining of a brutal assault by a head-warden on another prisoner, thereby broadening the scope of that writ by making it available to a prisoner not only for seeking his liberty but also to the enforcement of a constitutional right to which he was lawfully entitled, even when he was in confinement. In *Dr. Upendra Baxi* v. *State of Uttar Pradesh*[4], in respect of the inmates of the Protective Home at Agra who were living in inhuman and degrading conditions and were not in a position to move the Court for redress the Supreme Court treated a letter addressed to the Court by two law Professors of the Delhi University seeking enforcement of the constitutional rights of the concerned inmates as a writ petition and allowed them to maintain an action for the appropriate writ. Likewise the Supreme Court took note of a letter written by a journalist, Olga Tellis claiming redress against demolition of the hutments of the pavement dwellers by the Municipal Corporation of Bombay and it was treated as a writ petition. The Supreme Court also moved into action on the basis of a letter from the Legal Aid Committee, Jamshedpur, in regard to an under-trial in Dharbhanga jail alleged to have spent about 37 years in that capacity being shifted ever and anon from one jail to another in Bihar[5]. So also treating a letter from one A. Mahaboob Basha to the Supreme Court complaining that three under-trials—Rayappan, Kallannan and Avadaiappan, were kept in solitary con-

1. A.I.R. 1981 S.C. 344.
2. (1981) 2 W.L.R. 722, 740.
3. A.I.R. 1980 S.C. 1579.
4. (1981) 3 Scale 1137.
5. The Hindu, 2nd September, 1982.

finement as a writ petition, the Supreme Court ordered notice to the State of Tamil Nadu, the Inspector-General or Prisons and the Superintendent Central Jail, Madura[6]. In another case concerning workmen who were paid less than what they are entitled to under the Minimum Wages Act, overruling a preliminary objection of the Union of India and the Delhi Development Administration as to the maintainability of the writ petition on the matter, the Supreme Court held that such workers would come within the meaning of "forced labour" and observed: "Where judicial redress was sought by poor people and the Court was moved for the purpose by a member of the public writing a letter, the Court will cast aside procedural rules and entertain the letter as a writ petition"[7]. In the Judges Appointment and Transfer case[8], though on other matters the decision was only of a majority of 4 to 3, on the question of the *locus standi* of practising members of the Bar to challenge the validity of the transfer of a Judge and the circular letter issued by the Law Minister, there was general agreement with the views expressed by Bhagwati, J., and his affirmative answer. The doctrine as expounded in the case is: If there is a person or class or group of persons who, by reason of poverty or disability or socially or economically disadvantaged position, is not in a position to approach the Court any member of the public would have *locus standi* to move the Court for judicial redress of the legal injury caused to such person, class or group of persons by reason of violation of their legal or constitutional right or constitutionally or legally protected interest. It was also stated that where injury to public interest or public injury is caused as a result of breach of public duty owed by the State or any other public authority, any member of the public having sufficient interest can move the Court for judicial redress. In a very recent decision[9], the Supreme Court in a writ petition filed by a civil liberties organisation to ensure observance of labour laws in relation to workmen employed in projects connected with Asian Games particularly children below 14 years of age, after pointing out that section 3 of the Employment of Children Act, 1938, which banned employment of children below 14 did not apply to children employed in construction work and in view of the provisions of Article 24 of the Constitution the schedule to the Act must be immediately amended, observed categorically as follows:

"The time has now come when the Courts must become the Courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the *status quo*. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. The realisation must come to them that social justice is the signature tune of our Constitution and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realisation of the constitutional goals.

Those who are decrying public interest litigation do not seem to realise that Courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they exist also for the poor and the down-trodden, the have-nots and the handicapped and the half-hungry millions of our countrymen.

So far the Courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the Courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the doors of justice.

But, now for the first time the portals of the Court are being thrown open to the poor and the down-trodden, the ignorant and the illiterate and their cases are coming before the Courts through public interest litigation which has been made possible by the recent judgment delivered by this Court in Judges appointment and transfer cases."

"Public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visi-

6. The Hindu, 7th September, 1982.
7. *Ibid,* 18th September, 1982.
8. 1981 S.C.C. (Supp.) 87.
9. Writ Petition No. 8143 of 1981. *See* The Hindu, dated 4th November, 1982.

bility area of humanity, is totally a different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief.

Public interest litigation, as we conceive it, is essentially a co-operative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them."

"There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the Court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the Court. This is, to our mind, a totally perverse view smacking of elitist and *status quoist* approach.

It is true that there are large arrears pending in the Courts but that cannot be any reason for denying access to justice to the poor and weaker sections of the community. No State has a right to tell its citizens that because a large number of cases of the rich and the well-to-do are pending in our Courts, we will not help the poor to come to the Courts for seeking justice until the staggering load of cases of people who can afford, is disposed of."

"This new change has to come if the judicial system is to become an effective instrument of social justice, for without it, it cannot survive for long. Fortunately, this change is gradually taking place and public interest litigation is playing a large part in bringing about this change.

It is through public interest litigation that the problems of the poor are now coming to the forefront and the entire theatre of the law is changing. It holds out great possibilities for the future. This writ petition (by a civil liberties organisation to ensure observance of labour laws in relation to workmen employed in projects connected with Asian Games) is one such instance of public interest litigation."

In public interest litigation, the main requirement as to the member of the public who approaches the Court is that he should act *bona fide* and not for personal gain or private profit or political motivation or other oblique consideration. The mover should not be a busybody vexatiously seeking to interfere with a thing with which he has no concern at all. In sum, it looks as if a new constitutional jurisprudence is emerging in the field of civil rights and the Court is becoming a major initiative-producer of a modern social-justice oriented government. The scope of the doctrine and its limits are still to be set out.

Motor accident compensation jurisprudence. —Road accidents involving motor vehicles are increasing at an alarming rate. A statistical survey disclosed that in 1980, the total number of persons killed in such accidents was 20,200, while those injured numbered 1,05,500 in 1,35,900 incidents; according to another estimate there are 25,000 deaths and more than 1,00,000 injured in motor accidents on an average every year. Statistically road accidents are second only to the toll taken by heart attacks. The percentage of automobile accidents in India is almost the highest in the world. The major contributory factors are human error on the part of the persons driving the vehicles and road-users, mechanical defects and unsuitable road conditions. It is easy to list other causes as well such as tipsy drivers, jay walkers, absence of traffic control in any effective form, encroachments on the side paths intended for use by pedestrians in cities and towns and making them unfit for such use, stray cattle etc. The vehicles involved in road accidents are both private and public. As pertinently observed by Mr. V. R. Krishna Iyer "We complain against cyclists and pedestrians but we forget that the roads are narrow. They are not the monopoly of the car-owners. The small man has to move amidst the rush of huge vehicles."

The Motor Vehicles Act enacted in 1939 provides *inter alia* for compensation to the victims of road accidents. Despite patchwork amendments made from time to time the law has not caught up with the rapidly changing conditions. The Act did not provide for any statutory limitation regarding the amount of compensation payable akin for instance to the Schedule attached to the Workmen's Compensation Act. Nor has any scientific study-based norms been evolved or furnished as to

assessment of compensation. Compensation could be claimed only if the accident was caused by the wrongful act, neglect or fault of the driver or owner of the vehicle. Natually this is impossible where the accident proves proof of fatal as the heirs would not be present at the scene; nor could the police be expected always to extend their whole-hearted co-operation since the bus-owners-operators have generally the power of the purse. The rule as to onus of proof was by and large unrealistic. Way back, the Law Commission headed by Mr. Gajendragadkar had suggested the passing of legislation based on a no-fault liability. The Supreme Court also had felt "that having regard to the handicaps of innocent victims in establishing the negligence of the operator of a vehicle a blanket liability may be cast on the insurers". The non-imposing of limitations as to compensation had often led to claims being made in a speculative spirit. It had also led to wide disparities in the awards made by the Tribunals. For instance, a few months ago a Magistrate in Salem ordered the Anna Transport Corporation to pay Rs. 1,00,000 to a bus passenger who was injured[10]. More recently a Sub-Judge in Chingleput awarded Rs. 2,75,000 as compensation to the families of two workers, who were killed[11]. Other Tribunals had adopted a relatively stringent approach. The High Courts were therefore called upon to reduce or enhance the awards over a wide spectrum of claims. That apart even as between different High Courts there was no uniformity in regard to the amounts awarded under more or less the same situations. This is particularly noticeable in relation to compensation granted for death of children ranging from Rs. 1,000 to Rs. 10,000 or even Rs. 20,000[12]. It looked as if it was whimsical, involving elements of arbitrary speculativeness as to the longevity or span of life of the particular child or as to its developing into a useful or family-conscious breadwinner[13]. It is useful to recall the observation of Lord Simon, L.C., in *Benham* v. *Gambling*[14], that in regard to child victims "the thing to be valued is not the prospect of the length of days, but the prospect of a predominantly happy life". It was not always realised that a scientific assessment of compensation should cover both the value of the victim to the estate as well as the value to the dependants of the victim in case he survived. Computation naturally has to take note of longevity, income, prospects, increased cost of living, the higher value assumed to the average Indian life at the present time; and if the victim happened to be the bread-winner and the accident proved fatal the ages of his children should they be minors, will also have to be reckoned. Further, factors like contributory negligence will have to be taken into account. The Supreme Court had also made a very useful suggestion that payment of compensation should be by way of monthly instalments so as to prevent the frittering away of any lump sum payment.

The 1982 amendment to the Motor Vehicles Act which came into force on 1st October, 1982 has made some noteworthy changes. The owners of motor vehicles will be liable to pay a fixed amount as compensation to victims of accidents whether they proved fatal or not even if they or their drivers were not in fault. The compensation is Rs. 15,000 in case of death and Rs. 7,500 for permanent disability.

The Act also provides compensation to victims of "hit and run accidents" caused by vehicles which could not be identified. A scheme providing a solatium of Rs. 5,000 for death and Rs. 1,000 for grievous hurt is being framed with the general insurance industry contributing 70% to the Solatium Fund and the Central and State Governments contributing the balance.

Though these are welcome provisions they are at best only a small attempt at reform. According to Government the provisions are a measure of social justice to the innumerable poor victims of road accidents. The amount of Rs. 15,000 is rather paltry since the rupee's purchasing value itself is not much now-a-days. It is true that if the matter is taken up to the Courts higher amounts may be awarded as compensation to the bereaved. In view however of motor insurance being rationalised the endeavour should be to have a settlement without resort to litigation. One very striking discrepancy compelling attention is that while the Motor Vehicles Act fixed Rs. 15,000 for a road accident, in the case of air accident

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10. The Hindu, dated 12th August, 1982.
11. *Ibid*.
12. *Perumal* v. *State of Madras*, 1971 A.C.J. 141.
13. *Ibid*.
14. (1941) 1 All E.R. 7 (H.L.).

the current rate of payment is Rs. 2,00,000 for death or disablement and in the case of children below 12 years it is Rs. 10,000. Under the Railways Act of 1890, minor children, students and unmarried and unemployed persons are not covered for purposes of compensation but the Railway Ministry has directed its management to pay compensation to the relatives of these categories pending amendment of the Act. There seems to be little warrant or justification for this trifurcation in the matter of valuation of life. The loss is the same whether the accident was a road-accident or air accident or railway accident. The provision seems to be opposed to the spirit of Article 14 of the Constitution as well.

The amending Act has failed to remove another equally objectionable feature. State Road Transport Corporations are not now obliged to take third party insurance cover which is mandatory for private owners of motor vehicles. It is but proper that all vehicles, whether privately owned or State owned, should be insured and brought under one umbrella to ensure equal protection of the laws to passengers as well as pedestrians. A citizen's right to compensation should have its roots in statute and not exposed to the mercies or grace of the Government.

The concept of compensation needs a radical change. The development of a motor accidents compensation jurisprudence based on no-fault liability so as to ensure social justice, simple in application and expeditious in operation, is to be highly desired. It provides a field for ample and purposeful research.

Married Singles and their swelling number.— It is an ancient refrain "when I was single my pockets did jingle". Is it because of this or because of realisation "once bit twice shy" or because of any other reason that social research workers are finding that after divorce each of the parties thereto prefers to remain single rather than marry again?

"Through the wife the husband attains peace and happiness, likewise the wife through the husband; Only that way lies permanent prosperity; such is the goal of marriage" (Manu). "It is likely that in the wear and tear of married life some small friction or other may crop up and which may be exaggerated subjectively by one spouse or the other. In such situations the wholesome counsel of some respected elderly person will always be welcome as a healing balm". These observations of the Supreme Court in *Annapurna* v. *Saikumar*[15], are largely true. But intolerable situations may surface up due to mercenary considerations or the insidious activities of "Meddlesome Mattys" or of "snakes in the garden". In the case before the Supreme Court the parties accepted the Court's advice to live together in a separate house for one month on a trial basis free from the visits of their parents or grandparents. The Court also requested a retired High Court Judge in the vicinity to make occasional visits to the new home of the couple and smoothen out any differences between them. It must be that such therapy may not always work and the marriage gets smashed. Then pertinent questions—whether divorces are on the increase, whether divorce is essentially an urban phenomenon, whether it is the men or the women who hasten to seek divorce, what age groups resort to the remedy etc., have become the subject of much in-depth study, research and investigation resulting in the following conclusions. While seven years ago there were only 5 divorce cases filed in the Delhi High Court each day, the number is at present 25 per day. A survey conducted in 1961 in 587 selected villages involving 1,33,775 marriages over a period of 50 years showed wide acceptance of divorce among the village communities and that the institution was not an urban phenomenon. The 1971 Census reinforces the conclusion according to which the total number of divorced and separated women in the country was 8,70,700 of whom 7,43,200 hailed from the rural areas and 1,27,500 from towns.

The proportion of separated or divorced women to men is 1,030 to 1,000. More women remained single after separation than men in the rural parts. Another interesting feature was that among the urban middle class the educated and economically independent women did not hesitate to seek the initiative in breaking up unfortunate marriages. In Delhi in 50% of the cases it was the woman who resorted to divorce. According to

15. 1981 S.C.C. (Supp.) 71.

Kumari Kusum, Marriage Counsellor of the Indian Law Institute, Delhi, most of the couples who consult her are couples from the middle class; the spouses seldom blame each other; it is generally a third party who plays havoc with their lives, a domineering mother-in-law or the interfering parent of the wife. Couples left to themselves have a higher and better chance of making a success of their matrimonial lives.

The Message.—The tragedy of life is that wisdom dawns on us only when it has stolen the youth. Young men among us in particular have to get the right perspective in attacking social, economic or political evils. The story is told that when Goliath came against the Israelites the soldiers thought, "He is so big, we can never kill him". David looked at the same giant and thought "He is so big. I cannot miss". That should be the spirit and the approach. All of us should all the time recall, that nothing succeeds like hard work. There is great truth in the bard's song:

"No man is born into the world

Whose work is not born with him; there is

Always work,

And tools to work withal, for

Those that will.

And blessed are the horny

Hands of toil."

So on to the New Year dedicated to sincere work with hope in heart and a smile on the lips.

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"COURT" IN COURTS

By

R. THILLAI VILLALAN, Advocate, Madras.

The discussion stems from a decision in *Rathinaswamy* v. *Komalavalli*[1], by G. Ramanujam and Fakkir Mohammed, JJ., a case under the Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) (as amended by Act XXIII of 1973) and also Limitation Act (XXXVI of 1963). The word *Court* has not been defined in the present Limitation Act (XXXVI of 1963) or in the old Limitation Act (IX of 1908). Neither in the General Clauses Act nor in the Civil Procedure Code, is there any definition of '*Court*'. In the Evidence Act and in the Madras Court-fees Act, 1955, a definition of the word '*Court*' is found. In the Indian Penal Code, the definition of a Court of Justice in section 3 (*ii*) of the Code is found. In the absence of any definition of Court in the Tamil Nadu Act XVIII of 1960 (Rent Control) Act, and in the Limitation Act, the definition of '*Court*' in the other enactments will help to some extent to ascertain the intention and purpose regarding the mention of the word '*Court*' in section 5 of the Limitation Act. The new preamble refers to proceedings other than suits and there is no reference to *Courts*. Section 5 of the old Limitation Act, had restricted its application to certain proceedings whereas the New Act XXXVI of 1963 has wider application. But the common feature in section 5 of both the Acts is the term '*Court*'........Evidently there was authority among all the concerned quarters that to suit the changed conditions and circumstances, the administration of the Rent Control laws also required change of hands from non-judicial officers to judicial officers who are functioning as '*Courts*' ......[1]

Wharton's Law Lexicon defines '*Court*' as follows:

Court: (tr curia—Cour Fr Keort, Dut)

(1) The person and suite of the Sovereign, the place where the Sovereign sojourns with his regal retinue wherever that may be. The English Government is spoken of in diplomacy as the Court of St. James because the Palace of St. James is the Official Palace.

(2) The place where the sovereign administers Justice by his Judge or a Bishop, as the Supreme Court of Judicature, divided into the High Court of Justice and the Court of Appeal, the High Court of Parliament to which an appeal lies from the Court, the County Court, the Courts of Summary Jurisdiction, the Court of Quarter Sessions, the Court of Arches, the Consistory Court, Courts of *record,* where their acts and Judicial proceedings are enrolled for perpetual memorial and testimony, and they have power to fine and imprison and error may be brought upon their judgments, or Courts not of record being Courts of inferior dignity and in a less proper sense the King's Courts—and these are not entrusted by law with and power to fine or imprison the subjects of the realm, unless by the express provision of some Act of Parliament. Their proceedings are not enrolled or recorded) but their existence as well as the truth of the matters therein contained, may be tried by a Jury (*see* Odgers on the Common Law page 963 *et seq*; Joc Law Distionary). Chamber's Twentieth Century Dictionary says that *Court* is Hall of justice; the Judges and officials who preside there; any body of persons assembled to decide causes; a *sitting* of such a body.

In *Mohd. Ahmad* v. *Governor-General in Council*[2], Harries, CJ. and Abdul Rashid, J., said the Tribunal set up under the Uttar Pradesh Town Improvement Act, as applied to Delhi is not a *Court*......But in the same case, Abdul Rahman, J., dissented from the majority, saying the Tribunal at Delhi is not only a *Court* but is also subordinate to the Lahore High Court.

1. (1981) 2 M.L.J. (S.N.) 9 since reported in (1982) 2 M.L.J. 406. Ed.

2. A.I.R. 1945 Lahore 313.

In *Satdeo Pandey* v. *Baba Raghav Das*[3], it is stated......The term *Court* is used in section 2 of Contempt of Courts Act, 1926 in a wide sense, as including a tribunal, legally authorised to deal with a particular matter judicially. It is enough if the tribunal is entrusted with certain judicial functions which include the function of deciding litigated questions according to law—deciding them not arbitrarily, but according to certain rules and procedure which ensure that the person called upon to decide them acts with fairness and impartiality......

In In re *Ramnath Bholgothra (of Jammu)*[4], Somasundaram, J., said: There is no definition of *Court* in the Criminal Procedure Code. But a *Court* is ordinarily understood as 'a place where justice is judicially administered'. For the sake of brevity the Code uses the term *Court* and 'Magistrate' generally if not always as convertible terms.

Mohammad Ghouse v. *State of Andhra Pradesh by its Chief Secretary, Secretariat, Hyderabad*[5], observes that both in Articles 227 and 235 of the Constitution the word *Court* has been used and it cannot be said that the framers of the Constitution had not used this word to include persons presiding over those *Courts* or other functionaries of those *Courts*. While the use of the word 'Judge' may denote only the person, the word *Court* when used not only includes the person presiding over that Court, but also all the functionaries of that Court and any matters pertaining thereto.

In *Babulal and another* v. *Ramswarup*[6], it is said, that the word *Court* in section 37 (5) of Arbitration Act (1940), includes the Appellate and Revisional Courts and the plaintiff is entitled to the exclusion of the period taken by him in filing appeal or revision against the order of the Court setting aside the word.

In *The State* v. *K. V. Keshva Sew and another*[7], it is stated, that the words *"civil Courts"* have been used in a wider sense so as to include a Revenue *Court*.

In *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder Jhunjhunwala and others*[8], Hidayathullah, J., stated that the word *'Courts'* is used to designate those tribunals which are set up in an organised state for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish 'wrongs'; whenever there is an infringement of right or an injury, the Courts are there to restore the *vinculam juris,* which is disturbed (1909) 8 L. L. R. 330 Ref. para. (3).

By *'Courts'* is meant Courts of Civil Judicature and by 'tribunals' those bodies of men who are appointed to decide controversies arising under certain Special Laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is apply called the judicial power of the State. In the exercise of the power a clear division is thus noticeable. Broadly speaking certain special matters go before tribunals and the residue goes before the ordinary Courts of civil jurisdiction. The procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. The real distinction it is said, is that Courts have 'an air of detachment'. But this is more a matter of age and tradition and is not of the essence.

A Court in the strict sense is a tribunal which is a part of the ordinary hierarchy of Courts of Civil Judicature maintained by the State under its constitution to exercise the judicial power of the State*. These Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word 'judicial' has two mean-

3. A.I.R. 1953 All. 419.
4. (1953) 2 M.L.J. 399: A.I.R. 1953 Mad. 953.
5. A.I.R. 1959 A.P. 497.
6. A.I.R. 1960 Raj. 214.
7. A.I.R. 1960 Raj. 279.
8. (1962) 2 S.C.R. 339: (1963) 1 S.C. J. 471: A.I.R. 1961 S.C. 1669.

*Cf., to constitute a Court in its strict legal sense, it should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or definitive judgment which has the finality and authoritativeness which are the essential tests of a judicial pronouncement (*Brajanandan Singh* v. *Jyoti Narain,* A.I.R. 1955 S.C. 66) Ed.

ings. It may refer to the discharge of duties exercisable by a Judge, or by Justices in Court or to administrative duties which need not be performed in Court, but in respect of which it is necessary to bring to bear a judicial mind—that is, a mind to determine what is fair and just in respect of the matters under consideration. That an officer is required to decide matters before him 'judicially' in the second sense does not make him a Court or even a Tribunal, because that only establishes that he is following a standard of conduct and is free from bias or interest.

Government of Rajasthan and another v. *Sangram Singh and others*[9], held that it would be adopting the rule of interpretation laid down in section 4 of the Part B States (Laws) Act in holding that a *High Court* established by a royal proclamation in the former State of Bikaner must be taken to be established by a Royal Charter within meaning of Article 183.

In *Firm of S. Mohd. Ali and Sons and others* v. *V. Madhavrao and others*[10], it is stated ...... A *'Court of Law'* is a Tribunal dealing with and adjudicating upon civil disputes by the operation of law in a judicial manner untroubled by ulterior considerations of matters of executive policy and observing certain definite rules and procedure which are either defined by Statute or recognised by practice. It may be that a Tribunal falling under this definition may yet not be a Court of law but, if any of these attributes is missing the tribunal falls short of being a *Court of law*...... Although these Tribunals may have some or many trappings of a Court they are not *Courts* ...... All these aspects of the Act and the Rules unmistakably point to the conclusion that the Rent Controller is not a *Court* within the meaning of section 24 of Civil Procedure Code, but is a Tribunal, who in the exercise of his powers acts judicially.

Prafulle Chandra Bezberuah v. *M|s. Calcutta Credit Corporation and another*[11], considers that the term *Court* used in section 63, Civil Procedure Code, means a Court to which the Code applies and the Registrar of Co-operative Societies is not a Court of this kind although his attachment order has the same force and effect as the attachment order of a competent Civil Court.

In *Sitamarhi Central Co-operative Bank Ltd* v. *Thakur Jugal Kishore Sinha*[12], it is stated.

To be a Court, (*i*) The dispute must be in the nature of a civil suit; (*ii*) The procedure for determination of such a dispute must be a judicial procedure; and (*iii*) This decision must be a leading one.

All the three requirements must be present before a Tribunal deciding such a dispute could be called a *Court* and the tests for determining what is a *Court* as used in the Contempt of Courts Act will have to be construed in the setting in which it occurs........ Therefore the decision of the Assistant Registrar exercising the powers of the Registrar under section 48 of the Act is a definitive judgment which is binding and authoritative and must therefore be held to be a pronouncement of a *Court of Law* made under the Act.

In *Daya Ram* v. *Smt. Reshmu*[13], it is found that the provisions of sections 10 and 20 of H. P. Abolition of Big Landed Estates and Land Reforms Act (XV of 1954), indicate that the Compensation Officer is not a *Court*. It is true that he is empowered to conduct an enquiry into certain disputes and that an appeal lies against his order to the District Judge and a second appeal to the Judicial Commissioner. But these facts alone will not make him a civil *Court*. In *Workmen of M|s. B R. Darbar Ginning and Pressing Factory, Hubli xy L. G. Patil* v *Management of M|s. B. R. Darbar Ginning and Pressing Factory, Hubli by its Manager and others*[14], it is said that the word *Court* seems

9. A.I.R. 1962 Raj. 43.

10. A.I.R. 1964 A.P. 132.

11. A.I.R. 1965 Assam & Nagaland 21.

12. A.I.R. 1965 Pat. 227.

13. A.I.R. 1966 H.P. 36.

14. A.I.R. 1966 Mys. 225.

have been used in section 36 (3) of the Industrial Disputes Act (1947), in a restricted sense. It has been defined in sub-section (2) (*f*) of the Act as meaning 'the Court of Inquiry constituted under this Act.' That the *Court* defined in this clause is different from the labour *Court* is obvious from the fact that the Labour Court is defined separately in section 2 (*kka*) as meaning a *Court* constituted under section 7 of the Act.

In *Tulsipur Sugar Co., Ltd.* v. *State of U P. and others*[15], it is ruled .... Admittedly a Labour *Court* or an Industrial Tribunal is a Tribunal of limited jurisdiction. It is not one of the regular *Courts* which function in this country.

Municipal Committee, Tarn Taran through Executive Officer v. *State of Punjab, through the Secretary to the Government, Labour Department, Chandigarh and others*[16], holds that the meaning of the word *Court* which is not a term of art, varies with the context indicating divergent things. The word 'Suit' ordinarily means and apart from some context must be taken to mean a civil proceeding, instituted by the presentation of a plaint. The word *Court* followed by the word 'suit' in section 24 of the Minimum Wages Act, therefore means a civil *Court*. The Industrial Tribunal cannot be called a civil *Court* because the proceedings in these are not initiated by the presentation of a plaint. Everybody has not got a right to get his dispute adjudicated by it......

In *Thakur Jugal Kishore Sinha* v. *Sitamarhi Central Co-operative Bank Ltd.*[17], it is stated ......"Thus, the Assistant Registrar functioning under Bihar Co-operative Societies Act, is a *Court* subordinate to the High Court for purpose of section 3 of Contempt of Courts Act."

In the matter of *Manghyr Electric Supply Co., Ltd. (in liquidation)*[18], it is clarified ...... Even according to the definition given in secion 2 (*c*) of the Arbitration Act, *Court* means a civil Court which can decide a matter in dispute if the same had been the subject-matter of a suit and under section 446 (2) of the Companies Act, the Company *Court* can entertain a suit instituted by the Company and decide the subject-matter of the reference, if it were the subject-matter of the suit, and therefore there does not appear to be any bar to the entertainment of the application.

In *Malegowda* v. *Mugaiah*[19], the Mysore High Court ruled that in order to constitute a *Court in the strict sense of the* term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

In *M/s. Popular Process Studio and another* v. *Employees State Insurance Corporation, through Regional Director*[20], it is pointed out that the term *Court* is not defined in the Limitation Act, 1963, nor was it defined in the Limitation Act, 1908, which it repealed and replaced. It must therefore, be taken in its accepted sense in the legal parlance and would *prima facie* mean a *Court* of law in the hierarchy of Courts established for the purpose of administration of justice throughout the Union. Employees' Insurance Court is a domestic tribunal may be debatable but ...... it is a tribunal which is not a *Court* in the strict sense......

The pronouncement of a binding and authoritative judgment though absolutely essential, is not enough to constitute a Tribunal a *Court* in the strict sense. A further requirement is that the tribunal must have been invested with the inherent judicial power of the State and the pronouncement of a binding and authoritative judgment must be in exercise of that judicial power........

A tribunal invested with the inherent judicial power of the State and constituting a *Court* in the strict sense would automatically ac-

15. A.I.R. 1967 All. 430.
16. A.I.R. 1967 Punj. 369.
17. A.I.R. 1967 Pat. 1494.
18. A.I.R. 1968 Pat. 167.
19. A.I.R. 1969 Mys. 315.
20. A.I.R. 1970 Bom. 413.

quire all incidental powers necessary for the proper exercise of that power including the power to execute its own orders .... that the Commissioner (under Public Servants (Inquiries) Act), is not a *Court*...... It is not, therefore a Court in the strict sense or in the accepted connotation of that term in legal parlance...... It follows that it is not a *Court* for the purposes of the Limitation Act of 1963. In *R. D K. Sita Devi* v. *Anna Rao and others*[21], it is stated that the Estates Abolition and Conversion into Ryotwari Act (XXVI of 1948), is a special enactment and the disputes thereunder are adjudicated by the Settlement Officer and the Tribunal which are not *Courts*. Article 182 of the Limitation Act, will not therefore apply to the proceedings before the Tribunal, as that provision relates to execution of a decree or order of any civil Court.

In *Ganapathi* v. *Kumaraswami*[22], it is stated: If a particular authority is invested with all the trappings of a Court, the Courts have to come to the conclusion that such authority is a *Court*.

G. D. M. Rao, Ranga Paniah and Brothers[23] states that........ there cannot be any doubt that the Rent Controller (Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961, is a *Court*.

In *K. R. Sankar* v. *M. A. Buvanambal Ammal*[24], it is stated that the Controller (Madras Buildings (Lease and Rent Control) Act). is not a *Court* and investitute of power under section 2 (3) is to a *persona designata*.

21. (1969) 1 An. W. R. 48: A. I. R. 1970 A.P. 43.

22. (1975) 2 M.L.J. 171: 88 L.W. 525 at 528: (1975) T.L.N.J. 264 at 265: A.I.R. 1975 Mad. 383.

23. (1974) 2 An.W.R. 189: A.I.R. 1975 A.P. 13.

24. (1971) 1 M.L.J. 230: A.I.R. 1971 Mad. 368: 84 L.W. 134.

In *Smt. Vidya Devi, Widow of Ramji Dass* v. *Firm Madan Lal Prem Kumar*[25], it is decided that the Rent Controller and Appellate Authority under Punjab Rent Restriction Act are *Courts* or Civil *Courts* for purposes of sections 195 (1) (*b*), 476 and 479 of Criminal Procedure Code.

In *Joachim Fernandez* v. *Amina Kunhi Umma*[1], it is ruled that...... It is clear that the Appellate Authority constituted under Kerala Buildings (Lease and Rent Control) Act is not a *Court* but only an authority *persona designata*.

In *J Easwaran* v. *Palaniammal*[2], N. S. Ramaswami, J., stated...... It has been consistently held by this *Court* that the Rent Controller and the Appellate Authority (Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), are not *Courts* but only *persona designata*.

In *G. Bulliswamy* v. *Smt. C. Annapurnamma*[3], it is ruled that......the Rent Controller under the Rent Control Act of Andhra Pradesh comes within the meaning of a *Court* as contemplated by sections 3 and 33 of the Indian Evidence Act.

In *State Electricity Board* v. *T. P. Kunhaliumma*[4], it is decided that the District Judge under the Telegraph Act acts as a civil *Court*.

Section 3, Evidence Act states that *Court* includes all Judges and Magistrates and all persons except arbitrators, legally authorised to take evidence.

In the Madras Court-fees Act, section 3 (11) gives the definition of *Court*. It means any Civil, Revenue or Criminal Court and includes a Tribunal or other authority having jurisdic-

25. A.I.R. 1971 Punj. 150.

1. A.I.R. 1974 Kerala 162 (F.B.).

2. (1974) T.L.N.J. 380.

3. (1976) 1 An.W.R. 169: A. I. R. 1976 A.P. 270.

4. (1976) 4 S.C.C. 634: (1977) 1 S.C.R. 996: (1977) 1 S.C.J. 432: A.I.R. 1977 S.C. 282.

tion under any Special or Local law to decide questions affecting the rights of parties.

In the Penal Code, section 20, we find the definition of *Court* of Justice as a Judge or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

In no other enactment, we can find the definition of the word or term *'Court'**.

We are also drawn to the word *persona designata* in this discussion. In *Ram Milan and another* v. *Bansilal Tejsingh and another*[5], Hidayathullah, CJ., defined *persona designata* as a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character.

Parthasarathi Naidu v. *Koteswara Rao*[6]: considered *persona designata* as "Persons selected to act in their private capacity and not in their capacity as Judges". The same consideration applies also to a well-known officer like the District Magistrate named by virtue of his office and whose powers an Additional District Magistrate can also exercise and who can create other officers equal to himself for the purposes of the Eviction Act.

Thus all persons or bodies of persons who are doing judicial functions may be Courts *but* Courts *are not meant in the same sense at all times in all respects.*

*The statement may not be wholly correct, for instance, section 2 (5) of the Bankers' Books Evidence Act states Court means "any person or persons before whom a legal proceeding is held or taken". Ed.

5. A.I.R. 1958 M.P. 203.

6. (1924) I.L.R. 47 Mad. 369: 19 L.W. 402: A.I.R. 1924 Mad. 561 (F.B.).

THE 'DATE OF THE ORDER' UNDER THE TAMIL NADU CITY TENANTS' PROTECTION ACT (III OF 1922).

A Critical Note on *M. Arasan Chettiar* v. *S. P. Narasimhalu Naidu's Estate Trust, Coimbatore* and *Sri Raveeswarar Temple* v. *Navaneetha Ammal and others,* (1980) 2 M.L.J. 303: 93 L.W. 392: (1980) I.L.R. 3 Mad. 13: A.I.R. 1980 Mad. 305.

By

R. GOWTHAMANARAYANAN, *Advocate, Madras.*

This is one of the most important rulings under the Tamil Nadu City Tenants' Protection Act[1].

This Act makes a deviation from the general Law of Lease and gives a special right to the Lessee of the land, who has constructed superstructure on the leased-out land. This right is either to claim compensation for the superstructure[2], or to purchase the leased-out land on which he has constructed the superstructure[3], when the landlord comes out with an action for eviction.

Section 9 of the Act prescribes the mode of exercising the option of the tenant to purchase the leased-out land, the extent of the land which he is entitled to purchase and the price he has to pay. As far as the price to be paid, the section says:

"The price aforesaid shall be the average market value of the three years immediately preceding the 'date of the order' "[4].

The question that arose for consideration in the above case is as to the meaning to be given to the expression 'the date of the order' occurring in the above section.

Before this present decision, there were two reported decisions of single Judges on this point. The earlier one was by Mr. Justice Natarajan, in *P. T. Srinivasan* v. *Malleeswarar Devasthanam and others*[5]. According to this decision, the order that can be passed by the Trial Court under section 9 is only a composite order, which both declares tenants' entitlement to purchase the land and fixes the value of the land after fixing the minimum extent. There can be no piece-meal order under this section.

The latter one is by Mr. Justice Ramaprasada Rao, as he then was, in *N. V. Panchapakesan* v. *K. Swaminathan*[6]. As per this decision the order referred to in the concerned expression is the order of entitlement, namely, the order by which a competent Court first declares that the tenant is entitled to protection under the Act.

It is this inconsistency in the interpretation of the expression 'the date of the order' which necessitated an authoritative pronouncement by this Court through a Division Bench.

But, first of all it must be made clear that there is no inconsistency or contradiction between the above two decisions and in fact, though both the decisions attempt to interpret the word 'order' occurring in the expression 'the date of the order', both are decisions on two different aspects of the term. The earlier decision analyses the different stages an application under section 9 has to go through in the trial Court itself, namely, the decision on the entitlement, the fixing of the extent, price etc. That decision says that there cannot be separate orders at each stage but can only be a composite order after determining all the above points.

On the other hand the decision of Ramaprasada Rao, J., does not analyse the different stages in the trial Court, but deals with a case where there are different orders by different Courts in the hierarchy—the trial Court, the First Appellate Court, the Second Appellate Court etc.

In fact, the term 'order of entitlement' can be taken to mean the composite order given by the trial Court. This is the approach taken by Suryamurthi, J., in *Sri A. P. V. P. Devasthanam* v. *Varada Reddy and another*[7]. Hence, the decision of Ramaprasada Rao, J., is not inconsistent with the view taken by Natarajan, J.

1. Act III of 1922.
2. Section 3.
3. Section 9.
4. Section 9 (1) (*b*).
5. (1974) 2 M.L.J. 172.

6. (1976) 1 M.L.J. 338: 89 L.W. 128: A.I.R. 1976 Mad. 254.
7. (1978) 2 M.L.J. 537.

But, however, assuming that Ramaprasada Rao, J.'s judgment refers to 'order of entitlement' that may be passed by the trial Court before it fixes the extent and price, that is not the order referred to in the phrase 'the date of the order' occurring in section 9 (1) (*b*) since, as it is correctly pointed out, in the present decision, such an order is not contemplated under section 9. In fact, it is not in all cases the Court is called upon to pass an order on entitlement. In a case where the landlord himself gives a notice under section 11 of the Act offering to pay compensation for the superstructure, there is no need for an order of entitlement, in which case, if Ramaprasada Rao, J.'s view is taken to mean 'the order of entitlement' passed by the trial Court, there will be no order at all with reference to which price can be fixed.

Now, before discussing the correctness of the interpretation given in the present decision, we must see how section 9 reads:

Section 9 (1) (*a*) (i).—Any tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been instituted .... may .... apply to the Court for an order that the landlord shall be directed to sell for a price to be fixed by the Court, the whole or part of the extent of land specified in the application.

(ii) ....

(*b*) On such application, the Court shall first decide the minimum extent of land which may be necessary for the convenient enjoyment of the tenant. The Court shall then, fix the price of the minimum extent of the land, decided as aforesaid or of the extent of land specified in the application under clause (*a*) whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The Court shall order that within a period to be determined by the Court, not being less than three months and not more than three years from the date of the order, the tenant shall pay into Court or otherwise as directed, the price so fixed, in one or more instalments, with or without interest.

Under the section there are two internal aids available for the interpretation of the expression 'date of the order' occurring in the third sentence of sub-section 9 (1) (*b*).

The first aid is this:

Before the phrase 'the date of the order'; the word 'order' is found only in one place in this section, *i.e.*, in sub-section 9 (1) (*a*) (i). The relevant portion of it reads:

"any tenant .... may apply to the Court for an 'order' that the landlord shall be directed to sell for a price to be fixed by the Court, the whole or part of the extent of land specified in the application". Here, 'order' necessarily means an order directing the landlord to sell the land. That order must specify the extent of land and its price *i.e.*, a composite order as held by Natarajan, J.

The second aid is this:

The expression 'the date of the order' itself is found in two places in the same sub-section 9 (1) (*b*) in the third and fourth sentences. The expression 'date of the order' in the fourth sentence must necessarily mean the order fixing the price which is clear from the words 'price so fixed' used in that sentence. By applying the rule of interpretation that 'same words should be given the same meaning' we can come to the conclusion that the phrase 'date of the order' in the third sentence should also refer to the order in which the price is fixed.

It is the established and accepted approach that while interpreting any provision of enactment, the Court shall find out the intention of the legislature and that intention is to be gathered only from the words used in the enactment. While finding out the intention through the words of the enactment, established rules of interpretation have to be applied.

So, by following this approach and taking help from the two aids mentioned above, we come to the conclusion that the meaning that can be attributed to the word 'order' which is found in the expression 'the date of the order' occurring in the third sentence of sub-section 9 (1) (*b*) is the order in which the Court directs the landlord to sell the land for the price and the extent fixed in that order itself.

The result would, of course, be different if there are convincing reasons to deviate from the above approach.

In fact, the meaning given to that expression in the present judgment by the Division Bench is different from the above and the purpose of the present analysis is to find out the correctness of that construction.

The first aid was taken into consideration by Natarajan, J., in his judgment. The learned Judge has held:

"........ the order occurring in the sentence can have reference only to a composite order passed by the Court under section 9 (1) (*a*) (i) and cannot have reference to two independent and separate orders."[8]

That according to him, is the order in which the price of the land is fixed.

But the Division Bench in the present case feels that:

"........ from the practical point of view it is impossible to hold that 'the date of the order' referred to in the 3rd sentence in section 9 (1) (*b*) is the date of the order fixing the price of the land. It must be a date something definite and that too, must be anterior to the date of the order fixing the price."[9]

The reasoning given by the Bench in this connection is:

"An order follows the evidence adduced by the parties and cannot precede the evidence. Consequently, as the time when the parties adduce evidence either before the Court or before the Commissioner, regarding the average marked value of the land, they must know, with reference to what date the three year period backward has to be calculated........ When a statute talks of a period backwards, with reference to a particular date, that date must be specific and definite at the time when the parties are called upon to give evidence regarding the average market value of the land for the period of three years. It would have been impossible for them to give any such evidence, unless they know what is the date with reference to which the three year period will have to be calculated. On the date when the parties are required to give evidence it would not be known on what date the order will be passed by the Court fixing the price."[9]

The same is the reason given by the Court to give different meanings to the same expression 'date of the order' occurring in the third and 4th sentences of section 9 (1) (*b*). The Court says:

"........ The provision contained in section 9 (1) (*b*) can be made workable only by giving two different meanings to the expression 'date of the order' occurring in the 3rd and 4th sentences in sub-section."[10]......

........"If the expression 'the date of the order' occurring in the 3rd and 4th sentences meant the same date, namely, the date when the Court fixes the price to be paid by the tenant to the landlord, the third sentence will not be workable for the reasons already indicated, namely at the time when the parties are called upon to adduce evidence regarding the average market value of the land for a period of three years, the parties could not know and from the nature of the case nobody can know with reference to what date the three year period should be calculated, because, the passing of the order will be in future. Therefore, we have to give a meaning to the expression 'the date of the order' occurring in the third sentence in section 9 (1) (*b*) different from the meaning which we have given to the expression 'the date of the order' occurring in the fourth sentence under section 9 (1) (*b*)."

The Court has finally held that:

"Having given our careful consideration, we are of the opinion that the expression 'date of the order' occurring in the third sentence in section 9 (1) (*b*) must mean the date on which the Court decided the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant."[11]

In the words of their Lordships, the Court "derives strength to such a construction from the use of the word 'first' occurring in the first sentence and the use of the word 'then' occurring in the second sentence of section 9 (1) (*b*)."[10]

Thus the only basis for the Bench coming to such a conclusion is that, otherwise, the provision becomes unworkable inasmuch as the

8. (1974) 2 M.L.J. 122 at 175.
9. (1980) 2 M.L.J. 303, 311.
10. *Ibid* at page 311.
11. *Ibid* at page 312.

parties will not be in a position to give evidence since there will be no specific date before them with reference to which they can give evidence.

The reasoning given seems to be not sound. If we say that the value of land will be the average market value of the three years preceding the date of the order, which fixes the value, the parties will give evidence as to the market value of the land for three years preceding the date on which they are giving evidence. The difference in value between the date of evidence and the date of order will not be substantial, since the interval between the date of evidence and the date of order itself will not be much. Even if there can be any difference, it is a matter for the Court to take into consideration, *i.e.*, the Court must give suitable appreciation on the basis of the evidence available.

In fact, by holding that the date must be specific when the parties give evidence, to enable them to give proper evidence, the Court seems to assume that the parties can give evidence as to the market value of the land for each date in the three years prior to the specified date. Ordinarily the parties can produce some documents, like sale deeds of neighbouring lands or U.L.T. assessment order etc. So, even in such a case, the Court is called upon to exercise its discretion to give proper appreciation or depreciation and find out the value for the three years on the basis of the evidence available and work out the average. When such is the process of fixing the value it will not be difficult for the Court to fix the average market value for three years preceding the 'date of the order' fixing the price. Such a course is perfectly possible and the provision will not become unworkable if it is interpreted so.

In fact it is not new for the Courts to fix the value of properties with reference to 'the date of the order' fixing the value. It is established law that,

"........ in any action for wrongful detention, the plaintiff is entitled, on default of the defendant in re-delivering the goods to him, to payment in the alternative of the value of the goods thus wrongfully detained as at the date of the verdict or judgment; in other words, at the date of the decree."[12] What is the law, with reference to what date the plaintiff who has filed a suit for wrongful detention and prays for money value in the alternative gives evidence as to the value of the goods, though the relevant date is the date of decree which is not anterior to the date of evidence? The simple answer is that he gives evidence as to the value of the goods as on the date of the evidence. It has never been held that this position of law is unworkable for the reason that the plaintiff does not have before him the specific date with reference to which he can give evidence as to the value of the goods.

Further, there is another illustration in the present Act itself. Section 3 of the Act gives the tenant right to claim compensation to the superstructure he has constructed. Section 4 imposes the duty on the Court to ascertain the compensation.

Relevant portion of section 4 reads as follows:

"*Section* 4 (1).—In a suit for ejectment .... the Court shall ascertain the amount of compensation........ and the decree in the suit shall decide the amount so found due ....

(2) In an application under section 41 of the Presidency Small Causes Courts Act the Court shall ascertain the amount of compensation ....and shall pass an interim order declaring the amount so found due."

Section 5 prescribes the mode of determining the compensation. Section 5 (1) says:

"The compensation awardable under section 4 shall be the value of the building and trees and of any improvements which may have been made by the tenant on the date of the decree or interim order, as the case may be."

Here, the decree or interim order refers to the decree or interim order to be passed under section 4 declaring the amount found due, *i.e.*, the compensation. Thus, the Act itself speaks

12. *Dhian Singh Shoba Singh and another* v. *The Union of India,* 1958 S. C. J. 363: 1958 S.C.R. 781: (1958) 1 An. W.R. (S.C.) 93: (1958) 1 M.L.J. (S.C.) 93: A.I.R. 1958 S.C. 274 at 287.

of value to be ascertained as on the date of the decree or order in which the value is fixed. The same analogy has to be followed in valuing the land under section 9 also and there is no justification for a different approach.

Thus it is evident that the too technical a logic adopted in the present decision that the provision becomes unworkable if the expression "the date of the order" refers to the order fixing the price, since that date cannot be anterior to the date of the evidence is not justified.

To justify different meanings to the same expression 'the date of the order' occurring in the 3rd and 4th sentences in section 9 (1) (*b*), the Court derives strength from the use of the word 'first' occurring in the first sentence and the use of the word 'then' occurring in the second sentence of section 9 (1) (*b*). According to Their Lordships:

"The use of the word 'first' in the first sentence and the use of the word 'then' in the second sentence certainly fix and prescribe the sequence of events of the decision to be reached by the Court."[13]

Since section 9 (1) (*b*) reads:

"........ the Court shall first decide the minimum extent of land........then fix the price of the minimum extent of the land decided as aforesaid........" the Court came to the conclusion that first there will be an order fixing the minimum extent and then there will be an order fixing the price.

This approach is equally debatable. As Natarajan, J., has correctly put it:

"........ if it was the intention of the legislature that the orders should be passed........the legislature would have specifically made reference to the two orders that are to be passed by the Court at two different stages of the case."[14]

This reasoning gains strength by the fact that section 9 clearly specifies what are the orders to be passed by the Court at different stages ....such as the Court may excuse the delay and pass such orders[15], order amount of instalment repaid[15] order directing conveyance[16], by the same order direct the tenant to put the landlord into possession of the remaining extent of the land if any"[16].

So, if the legislature intended that there should be separate orders fixing the minimum extent and the price and the expression 'date of the order' occurring in two places refers to the above two orders passed in two different stages, the legislature would have certainly made it specific.

Further, even according to the Act,

"The Court shall then fix the pdice of the minimum extent of land decided as aforesaid or the extent of land specified in the application under clause (*a*) whichever is less"[17].

So, in cases where the applied extent is less than the minimum extent determined by the Court, such a determination of minimum extentwill be superfluous and of no significance and as such any order that should be passed as per the present decision fixing the minimum extent will be of no consequence. So, to give any importance to that determination and to fix the price with reference to that date of determination would clearly not be intended by the Legislature.

The words 'first' and 'then' as such, only refer to the sequences of steps to be taken by the Court and do not give any material to suggest that there should be two orders at each stage. The present decision gives much emphasis to these words, which is unnecessary.

There is another difficulty in following the present ruling. Since there will be substantial time interval between the order fixing the minimum extent and the date of the order fixing the price, to borrow the words of Natarajan, J., "in such cases the order of the Court fixing the average market value of the

13. *Ibid* at page 310.
14. (1974) 2 M.L.J. 172 at 175.
15. Section 9 (2).
16. Section 9 (3) (*a*).
17. Section 9 (1) (*b*).

land will have no reference to the state of affairs when the Court passes its order and surely such a state of affairs would not have been contemplated by the Legislature."[18]

The average value has to be computed with reference to the transactions which took place within three years prior to the Court passing its order fixing the price of the land and directing sale. This is particularly so since the landlord is parting with his valuable right:

"The rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear."[19]

The present Act specifically says that the compensation should be the average market value of three years but it is not specific that this three years is preceding the date of order fixing the minimum extent. In the absence of such specific provision, the date must necessarily be the date in which the individual is deprived of his property right, namely, the date of order directing the landlord to sell the property, otherwise the compensation will not be really a compensation.

Since the workability theory of the Bench has little weight, the Court is not justified in deviating from the view taken by Natarajan, J., and in giving different meanings to the same expression "date of the order".

In the beginning the Court observes that:

"As a matter of fact only the order mentioned in sub-section 3 (*a*) of section 9 will be relatable to the order mentioned in section 9 (1) (*a*)."[20]

It is submitted that sub-section 3 (*a*) refers only to

"An order directing the conveyance by the landlord to the tenant......"

The word 'conveyance' means the execution of necessary instalments for sale. Unless there is already an order for sale, there cannot be any order for conveyances. As such what is referred to in section 9 (1) (*a*) (i) is an order for sale and what is referred to in section 9 (3) (*a*) is an order for conveyance, both are different in nature, the later order being the consequence of the former.

Thus from the above analysis we may conclude that the expression 'date of the order' which occurs in the places in section 9 (1) (*b*) must be given the same meaning and the word 'order' in that expression necessarily refers to the order referred to in section 9 (1) (*a*) (i) which is only a composite order directing the landlord to sell the land for the price and the extent fixed in that order itself. As such, the order is one of direction for sale and the view taken by the Bench in the present case may require further consideration.

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18. (1974) 2 M.L.J. 172 at 175.
19. Vepa P. Sarathy, Interpretation of Statutes, II Edn., p. 182.
20. *Ibid* at page 310.

ORDER PASSED UNDER SECTION 47, C. P. C. BY EXECUTING COURT WHETHER APPEALABLE.

By

K. VARADADESIKAN, *Advocate, Villupuram.*

Consequent upon the passing of the Code of Civil Procedure (Amendment) Act (CIV of 1976), wherein the deeming provision in respect of orders passed under section 47, Civil Procedure Code, which occurred in the Code of 1908, under section 2 (2) defining the 'decree' as including an order under section 47, Civil Procedure Code, has been omitted, the question whether an order passed by an executing Court under section 47, Civil Procedure Code, as amended by the Act CIV of 1976, is appealable or not has become a lively question. Different High Courts have expressed varying views on the question.

In *Mohan Das* v. *Kamala Devi*[1], a Division Bench of the Rajasthan High Court has held that the definition of 'decree' having been amended by omitting the words 'section 47 or' as a result of the Amending Act, 1976, any order passed under section 47, Civil Procedure Code, which is otherwise treated as decree is no more a decree and as such the first appeal and the second appeal which were provided earlier against the orders passed under section 47 are no more there. The said High Court is also of the view that the pending appeals under section 47, Civil Procedure Code, as on 1st February, 1977, when the Amendment Act came into force are alone saved by virtue of section 97 (2) (*a*) of the Civil Procedure Code (Amendment) Act, 1976. It is further observed in the said decision that the Amending Act, 1976 has been brought with the intention of shortening and curtailing litigation and therefore section 104, Civil Procedure Code, and the rules framed thereunder do not provide for an appeal against the order passed under section 47, Civil Procedure Code.

A Full Bench of the Kerala High Court has in *Mohamed Khan* v. *State Bank of Travancore*[2], expressed the view that the express omission of orders under section 47, Civil Procedure Code, from the definition of 'decree' in section 2 (2) has rendered orders under section 47, Civil Procedure Code, as not appealable since the commencement of the Amending Act CIV of 1976. It was a case decided under the Kerala Agriculturists' Debt Relief Act (II of 1970), which has not provided for any appeal against an order refusing to amend the decree during the execution proceedings under section 8 of the Act. At the same time, the Full Bench of the Kerala High Court has observed that if an adjudication by a Court satisfies the definition of a decree in section 2 (2) of the Civil Procedure Code, and an appeal is provided for against a decree of such Court under the Civil Procedure Code, an appeal would lie against such a decision even if there is no specific provision made in that behalf in the relevant statute.

The next decision to be considered has been rendered by a Division Bench of the Patna High Court in *Parshava Properties Ltd.* v. *A. K. Bose*[3]. The Patna High Court is of the view that if an order passed under section 47, Civil Procedure Code, comes under the definition of 'decree' even after amendment of section 2 (2) Civil Procedure Code, it is appealable. In other words if an order passed by a Court satisfies the essential characteristics of 'decree' as now defined, the mere fact that the order was passed in exercise of powers under section 47 of the Code would not be of consequence. In order to satisfy the definition of decree, two things have to be established. They are: (*a*) the adjudication in question should conclusively determine the rights of the parties with regard to all or any of the matters in controversy; and (*b*) the determination should be in respect of a controversy in the suit. It is further observed by the Patna High Court that the determination in a proceeding which is a continuation of a suit is determination in the suit, so as to amount to a decree within the meaning of section 2 (2) of the Code. That an execution proceeding is a continuation of the suit admits of no doubt in view of the decision of the Supreme Court in *D. Bhushayya* v. *K Ramakrishnayya*[4]. "It would thus appear that both appeal and execution proceedings are continuation of the suit. Just

1. A.I.R. 1978 Raj. 127.
2. A.I.R. 1978 Ker. 201.

3. A.I.R. 1979 Pat. 308.
4. (1963) 2 S.C.R. 499: A.I.R. 1962 S.C. 1886.

as a final determination of controversy in the appeal is a decree, so must be a decision in the execution proceeding *provided* the other necessary ingredients of section 2 (2) of the Code are fulfilled". Hence the right of appeal is only available against a conclusive determination and not in regard to orders which are interlocutory in nature. The intention of the legislature appears to be to eliminate appeals only against orders where right of appeal is not essential like orders which are interlocutory in character. According to Patna High Court if the amendment of section 2 (2) be taken to abolish right of appeal against orders under section 47 even where final determination of right takes place, the provision would be discriminatory and violative of Article 14 of the Constitution. So according to Patna High Court the question of appealability of orders under section 47, Civil Procedure Code, is dependent upon the question whether such orders come within the definition of 'decree'. This in turn is dependent upon the question whether the determination or adjudication in execution proceedings amounts to a conclusive order affecting the rights of the parties or only an interlocutory order. This will be a debatable question in every case and there will be scope for Judge made law on the point. Following the decision of the Rajasthan High Court in *Mohan Das's case*[5], a Full Bench of the Allahabad High Court has held in the case *Pratap Narain* v. *Ram Narain*[6], that an order passed on an objection filed under section 47, Civil Procedure Code, after the amendment of 1976 does not amount to a decree and is not appealable. According to the Allahabad High Court, the intention of the legislature is to affect the vested right of appeal retrospectively. To arrive at this view, the Allahabad High Court has relied on the report of the Joint Committee as an aid to construction. The Joint Committee suggested a change in the definition of the word 'decree'. While making the suggestion the Committee observed: "The Committee note that according to the definition of the expression 'decree' in the Code, the determination of any question under section 47 amounts to a decree and as such an appeal and second appeal would lie against such determination. The Committee are of the view that this provision of the Code is mainly responsible for the delay in the execution of decrees. The Committee therefore feel that the definition of the term 'decree' should be amended so that the determination of questions open under the section may not amount to a decree". Combined with the report of the Joint Committee, is the introduction of section 99 (A) in the Code of Civil Procedure by the Amending Act CIV of 1976. Section 99 (A) runs as follows: "Without prejudice to the generality of the provision of section 99, no order under section 47 shall be reversed or substantially varied on account of any error, defect or irregularity in any proceedings relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case".

In introducing section 99-A the words 'in appeal' as recommended by the Law Commission were dropped from that section. Basing its view on those aspects, the Allahabad High Court has held that as an execution proceeding is not a continuation of suit, the right to appeal accrues to a litigant on the date of filing of the execution application. Inasmuch as the amendment of section 2 (2) of the Code is restrospective no appeal lies against an order passed under section 47, Civil Procedure Code, after the commencement of the Amending Act CIV of 1976.

Then we come to the decision rendered by the Division Bench of the Madhya Pradesh High Court in *Chaluram* v. *Bhagatram*[7]. The question that arose in this case was whether the amendment brought about by section 3 of the Amending Act in section 2 (2) of the Code by which the determination of any question under section 47 does not now amount to a decree can be construed to take away a vested right of appeal in pending executions. The principle that the right of finality of an order does not vest in a suitor until the passing of the order and therefore if a new right of appeal or revision is conferred during the pen-

5. A.I.R. 1978 Raj. 127.
6. A.I.R. 1980 All. 42.
7. A.I.R. 1980 M.P. 16.

dency of the proceeding but before the making of the order, it is the new right of appeal or revision conferred that would govern the order is held to be inapplicable when the new law takes away or curtails an existing right of appeal. In taking this view, the Madhya Pradesh High Court has relied upon the two decisions of the Supreme Court reported in *Garikapati* v. *Subbiah Choudhry*[8] and *Indra Sohanlal* v. *Custodian of Evacuee Property, Delhi*[9]. Therefore the said High Court has ultimately decided that the abolition of right of appeal cannot be applied to orders made in pending proceedings (as on 14th January, 1977), though made after the change in law as that would deprive a person of his vested right.

Next in order we come to the decision reported in *Sundaresan* v. *Ramachandran*[10]. This decision has been pronounced under Tamil Nadu Debt Relief Act (XL of 1979), wherein section 25 enacts a deeming provision that the orders passed by a Court under the enumerated sections of the said Act are appealable as if such order related to the execution, discharge or satisfaction of the decree within the meaning of section 47 of the Code of Civil Procedure (V of 1908). Mr. Justice Ratnam has held that the orders enumerated under section 25 of the special statute are appealable. Further the application in that case was filed in the suit itself and not in execution proceedings. In these circumstances the Madras High Court has held that though the effect of the order passed under the Act is not that of a decree and even if the effect of an adjudication under section 47, Civil Procedure Code, is taken outside the scope of the definition of a decree under section 2 (2), such an adjudication shall nevertheless be treated as a decree though in fact and also in law, it is not. Mr. Justice Ratnam seems to adopt the view of the Patna High Court, when he observes that if the order satisfies the characteristics of a decree, the mere fact that the order is deemed to be one passed under section 47, Civil Procedure Code, which as a result of the amendment is taken out of the categories of decrees as defined in section 2 (2) of the Code of Civil Procedure, would not be of any consequence. This case is distinguishable on its own facts. The question whether an order passed under section 47, Civil Procedure Code, is appealable or not has not come to be decided directly in the above case. It arose only incidentally. Further whether the above case can be availed of in respect of orders passed in execution proceedings under Tamil Nadu Act XIII of 1980 and (L of 1982), where there is no provision similar to section 25 of Tamil Nadu Act (XL of 1979), may be open to question.

The last decision to be reviewed is that of the Division Bench of the Gujarat High Court reported in *Hasumatiben* v. *Ambalal*[11]. In this case the decision of the Patna High Court in *Parshava Properties Ltd.* v. *A. K. Bose*[12], has been dissented from. In this Gujarat case, earlier case law has been reviewed and the Gujarat High Court has held that an order passed under section 47, Civil Procedure Code, is merely an order and not a decree after the Amending Act CIV of 1976, has come into force. Therefore, it is held to be unappealable. The scheme of the amended Code has also been considered in this case and it is pointed out that wherever the Legislature thought it fit to provide for appeal in execution proceedings, it has specifically enacted that the order passed in execution proceedings shall be deemed to be decree. For example, Order 21, rules 46-H, 58 (4) and 103 provide for appeals by means of deeming provisions in that behalf. The orders passed under those rules are deemed to be decrees for the purpose of appeals. It is therefore clear that the orders contemplated to be appealable as decrees were in fact not decrees, but by deeming fiction it was declared that they will be treated as decrees. It is apparent that the deeming provision of all orders under section 47 of the Code of Civil Procedure, which could be read as decrees under the provisions of section 2 (2) of Civil Procedure Code, were omitted. As a corollary by amendment section 47 (2)

8. 1957 S.C.J. 439: 1957 S.C.R. 488: (1957) 2 An.W.R. (S. C.) 1: (1957) 2 M.L.J. (S.C.) 1: A.I.R. 1957 S.C. 540.
9. 1956 S.C.J. 171: (1953) 2 S.C.R. 1119: A.I.R. 1956 S.C. 77.
10. (1981) 1 M.L.J. 389.

11. A.I.R. 1982 Guj. 324.
12. A.I.R. 1979 Pat. 308.

of the Civil Procedure Code, was omitted and thereafter certain orders were made appealable as orders and certain orders though they were orders by deeming fiction made appealable as decrees. Therefore a complete machinery was provided in order to meet with the exigencies of the removal of the deeming provisions of an order under section 47 from the definition of the decree as provided in section 2 (2) of the Code of Civil Procedure.

Preponderance of the authorities is in favour of the view that an order passed under section 47, Civil Procedure Code, in execution proceedings initiated after the Amending Act CIV of 1976, is not appealable.

WHETHER A CO-OWNER OF A BUILDING CAN FILE AN APPLICATION WITHOUT THE WRITTEN CONSENT OF THE OTHER CO-OWNERS UNDER THE PROVISIONS OF THE TAMIL NADU RENT CONTROL ACT?

By

R. GOVINDARAJAN, B.A., B.L., *Advocate.*

The definition of landlord under section 2 (6) of the Rent Control Act envisages three categories—"(1) One who owns a building as absolute owner; (2) A person who owns it as co-owner along with other co-owner or co-owners; and (3) a person who acts on behalf of or for the benefit of the beneficial owner of the building such as agent, trustee, guardian, etc. The first two classes of persons have full title to the property. The third category, on the other hand, comprises either those who have no title at all to the property and only possess a power to act for the owner or those who although possessing a legal title cannot act for their own benefit but can only act for the benefit of another who is the beneficial owner of the property. In the way the definition in section 2 (6) is designed, the distinction is clearly marked between a sole owner or co-owner of a building on the one hand and a mere agent of the owner on the other, although all of them have to be treated as "landlords" for the purposes of the Act one of which is in connection with the filing of eviction petition against tenants." (vide *Vasudevan* v. *Ramachandran*[1], per Justice V. Balasubrahmanyan.)

Since the definition is so broad, the objection always taken by the tenants is that a co-owner cannot file an application without the consent of the other co-owners in view of section 10 (8) of the Act, which lays down—"Notwithstanding anything contained in this section, no person who is receiving or entitled to receive the rent of a building *merely as an agent of the landlord* shall except with the previous written consent of the landlord, be entitled to apply for the eviction of the tenant." The question therefore is whether a co-owner is an agent of the other co-owners and, if so, whether the written consent of the other co-owners is necessary as per section 10 (8) of the Act.

The Supreme Court has recently held in *Sriram Pasricha* v. *Jagannath*[2]. "A co-owner is as much an owner of the entire property as a sole owner of a property is. He owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property." This dictum clearly shows that a co-

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1. (1980) 1 M.L.J. 534: 93 L.W. 879.
2. (1976) 4 S.C.C. 184: 1977 R. C. J. 494: (1977) 1 S.C.R. 395: A.I.R. 1976 S.C. 2335.

owner comes in the 2nd category of landlords mentioned supra. "One co-owner cannot be deemed to be the agent of the other co-owners for a co-owner is the acknowledged landlord of the tenants." Hence Justice Balasubrahmanyan has held in *Vasudevan's case*[3]—"I am quite clear in my own mind that on the incontrovertible position in law of co-owners, who must be distinguished from "agents" properly so-called, section 10 (8) has absolutely no application to the petition filed."

There is an earlier Bench decision by Ismail and Mohan, JJ., reported in *V. Bichava* v. *N. Venkatesan*[4], where they held "Having regard to the object of the provision we are of opinion that the legislature could not have contemplated any such situation and that section 10 (8) of the Act applies only to a person who has been appointed as an agent only for the purpose of collecting the rent from the building and will not take in the other types of agents of the landlord who may be empowered by the landlord himself to take proceedings for eviction also; the class of persons contemplated by section 10 (8) of the Act is *a very limited class* and only with reference to that class, the requirement of obtaining the previous written consent of the landlord for filing a petition for eviction will apply." They have followed the judgment of Justice Srinivasan, in *Pahalajmal Khatumal* v. *K. Govindarajulu*[5]. The whole question turned upon the fact whether a General Power of Attorney Agent is also included in section 10 (8) of the Act and they held "Not".

This question again came to be considered in *Ehasan Bivi* v. *Nagalakshmi Ammal*[6], before Justice Gokulakrishnan, who followed the Division Bench referred to above and also that of Justice Balasubrahmanyan in *Vasudeva* v. *Ramachandra*[3], and the Supreme Court and held that a co-owner need not obtain the written consent of the other co-owners for filing eviction petition. The learned Judge did not follow the decision of Ramaprasada Rao, CJ., in *Abdul Rahman* v. *Ganga Chandrasekhar*[7], as it has not conclusively held that one co-owner has to obtain the written consent of the other co-owners before filing the eviction petition. The learned Judge has also expressed his doubt as to whether this will be covered under section 10 (8) of the Rent Control Act.

While such is the view, a case came before Justice Natarajan, in *A. Alagianathan* v. *M. Saminatha Pillai*[8]. The facts in that case are that two co-owners were receiving their respective shares of rent from the tenant separately and they were living separately. The building was not divided. There was also a suit for partition pending between them. The learned Judge held that consent of the other co-owners is necessary for filing an eviction application. The learned Judge would be right, if he had laid down that dictum on the basis that the brothers are only joint lessors and that they are not co-owners but joint-owners; whereas he has followed the principle laid down in *Kotiah* v. *Abdul Aziz Khan*[9]. and also in *V. P. Abdul Rahman* v. *Ganga Chandrasekaran*[7], which may not good law in view of the Decision Bench reported in *V. Bichava's case*[10].

I would therefore submit that a co-owner need not obtain the written consent of the other co-owners before filing the eviction application as they do not fall under section 10 (8) except that it will be open to the Court to satisfy itself that the person making the application is making it on behalf of others and sufficient safeguards are made to the tenant.

I therefore submit that the law as stated in *A. Alagianathan* v. *M. Samintha Pillai*[8], is debatable.

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3. (1980) 1 M.L.J. 534: 93 L.W. 879 at 882.
4. (1979) T.L.N.J. 312.
5. (1961) 1 M.L.J. 150.
6. (1981) T.L.N.J. 17.
7. (1978) 2 M.L.J. 234: 91 L.W. 519:
8. (1980) 93 L.W. 580.
9. (1951) 2 M.L.J. (S.N.) 68.
10. (1979) T.L.N.J. 312,

WHETHER AN APPLICATION IS NECESSARY FOR ASCERTAINMENT OF MESNE PROFITS AND WHETHER SUCH APPLICATION IS GOVERNED BY THE LIMITATION ACT?

By

A. M. HASAN MOHAMED, B.A., B.L., *Advocate, Tiruvarur.*

It is submitted that the answer to the question posed above should be only in the negative.

In *M. Janakirama Iyer* v. *Meenakshiammal*[1], Swamikkannu, J., has, however, rendered a decision, upholding the finding and order passed by the lower Court that the limitation is three years for an application for enquiry into mesne profits while that application is filed under Order 20, rule 12, Civil Procedure Code; that the said application is governed by Article 137 of the Limitation Act (XXXVI of 1963); and that the application filed beyond three years, reckoning the period from the date of taking possession of the properties is barred by time, and with a final observation that "the contention that was raised on behalf of the plaintiff that the application for mesne profits is only a reminder and that the suit still deemed to be pending was rightly repelled and held to be unsustainable and untenable by the lower Court."

For proper understanding and appreciation, the relevant rule in the Civil Procedure Code, 1908, as subsequently amended by Act CIV of 1976 is reproduced hereunder:—

"*Order* 20, *rule* 12: *Decree for possession and mesne profits*:—(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree—

(*a*) for the possession of the property;

[2](*b*) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an enquiry as to such rent;

(*ba*) for the mesne profits or directing an enquiry as to such mesne profits;

(*c*) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (*b*) or clause (*c*), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such enquiry."

It is to be noted that the sub-rule (2) casts a duty upon the Court to pass a final decree. It is to be noted further that in the above provisions, nowhere the word 'application' or 'petition' is employed. Only when any such word is used in a section or rule of a legislative enactment, one can reasonably, *though not rightly,* say that the application is governed by Article 137 of the Limitation Act, which runs as follows:—

Description of application.	*Period of Limitation.*	*Time from which period begins to run.*
Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues.

1. (1982) 2 M.L.J. 461.

2. Substituted by Act CIV of 1976.

When no application or petition is contemplated to be filed by any of the provisions either in the Civil Procedure Code or Civil Rules of Practice or any other enactment in force in this State, there arises no question of filing any application, and consequently, Article 137 of the Limitation Act cannot and should not be applied.

In Order 20, rule 12, Civil Procedure Code, in the year 1911, the Madras High Court introduced a third sub-rule which ran in these terms:—

"Where an Appellate Court directs such an enquiry, it may direct the Court of first instance to make the inquiry; and in every case the Court of first instance shall, on the *application* of the decree-holder, inquire and pass the *final decree*." (Italics mine).

In *Ramasubramanya Pattar* v. *Karimbil Pati and others*[3], a Division Bench had elaborately considered the entire provisions of Order 20, rule 12, Civil Procedure Code, including the abovesaid sub-rule (3) as it stood in the year 1940, with regard to the scope, construction and the procedure under this rule and ruled out that an application for ascertainment of mesne profits is not necessary—but, if made, it is not governed by Article 181 of the Limitation Act. (Corresponding Article now is 137). In that ruling, Leach, CJ., speaking on behalf of the Bench had also recorded a finding "that the fact that the decree-holder thinks it advisable to move the Court to commence the inquiry does not mean that he is making an application within the purview of Article 181. Whenever, he moves the Court, the Court is bound by the rule to enquire and grant the decree-holder a final decree. In such circumstances the application is merely in the nature of a reminder of what is still to be done and that the usage of the word 'application' in sub-rule (3) should be read as meaning a motion entirely free from the mischief of Article 181."

In the penultimate sentence of the last paragraph of the judgment, his Lordship concluded "that the attention of the Rule Committee should be called to sub-rule (3) with a view to its being framed in a manner which will leave no scope for any misunderstanding." It seems, only taking into consideration of the above conclusion, the High Court of Madras in its P.Dis. No. 93 of 1941, introduced necessary and radical amendment to the sub-rule (3) and after that amendment, the rule was as follows:—

"Where an Appellate Court directs such an inquiry, it may direct the Court of First instance to make the inquiry; and in every case the Court of first instance may of its own accord, and shall whenever moved to do so by the decree-holder, inquire and pass the final decree."

It is apposite to mention at this stage that that sub-rule (3) is not now in the statute book. The abovesaid sub-rule (3), even if printed in some of the Civil Procedure Code, books under the heading "(High Court Amendment: Madras)"—it shall stand repealed under section 97 (1) of Act CIV of 1976.

It is for these reasons, I was inclined to use the language "though not rightly" earlier. From a thorough survey and reading of the history of the said provisions and abovesaid ruling of the Division Bench, it is clear that the application for ascertainment of mesne profits is not governed by the Limitation Act.

In *Jainalabuddin* v. *K. S. A. Kadar and others*[4], while dealing with a matter as to whether the application for ascertainment of mesne profits under Order 20, rule 12, Civil Procedure Code, is governed by Article 137 of the Limitation Act, Justice Balasubrahmanyan has aptly approached the matter and pointed out "that the better view seems to be that there is no such thing as limitation for such application. ...... Although they are not direct decisions, it seems to me that they do point to the view I have earlier expressed."

Normally, the offices of the various Courts in this State used to draft the decree in suits wherein the relief of mesne profits is claimed among other reliefs, only in the terms that—

3. I.L.R. (1940) Mad. 372: (1940) 1 M.L.J. 54: 50 L. W. 933: A.I.R. 1940 Mad. 124 (F.B.).

4. (1978) 91 L.W. 478.

"that the mesne profits be decided in separate proceedings under Order 20, rule 12 of the Civil Procedure Code."

Therefore, it is clear, that in the style and form it is only a preliminary decree. Even if the decree in such suits is drafted in any other form or fashion, it can only be characterised as a preliminary decree, for, unless and until the relief of mesne profits claimed in the suit, and for which a provision is made in the decree which came to be passed in the first instance is worked out by way of a proceeding shall have to end in a final decree as specifically envisaged in Order 20, rule 12, sub-rule (2) of the Civil Procedure Code (Please note the word 'final decree' in that sub-rule). Unless a final decree for mesne profits is passed, the decree passed in the first instance, which has the force of a preliminary decree will produce an anomalous situation of there being a fruitless preliminary decree. The decision of Ismail, J. (as he then was), in *Sivan.Pillai* v. *Anbayyan*[5], though not a direct ruling on the present matter, contains the observation therein, *viz.*, "that a petition for passing final decree is only an application in a pending suit, that the passing of a preliminary decree does not terminate the suit, notwithstanding the preliminary decree the suit is pending and the suit is terminated or comes to an end only by the passing of the final decree, that there is no compulsion on any of the parties to the preliminary decree to apply for a final decree within a particular time, that as a matter of fact, once the application made by a decree-holder for passing final decree is dismissed on the ground that it is barred by limitation, we are left with a peculiar and nebulous position of the suit being still pending and the preliminary decree already passed not having been cancelled; but at the same time, the decree-holder in the suit not being able to realise the fruits of the decree which he obtained under the preliminary decree." This lends full support to the view point that a petition for passing of final decree is not attracted by the provisions of the Limitation Act.

Therefore, it is submitted that the contentions raised on behalf of the plaintiff in the case under reference that the application for mesne profits is only a reminder and that the suit is still deemed to be pending, and the application is not barred by time, is meaningful and sustainable in law.

For the foregoing reasons, it is submitted, that the view expressed in *M Janakirama Iyer* v. *Meenakshiammal*[6], may require further consideration.

Finally, it is submitted that it may possibly be stated by the Bench or Bar that all the rulings quoted above were not rendered on interpreting the provisions of Order 21, rule 12 of Civil Procedure Code, 1908 as subsequently amended by Act CIV of 1976 and on a conjoint discussion of Article 137 of the Limitation Act, 1963. Further, as far as the question of limitation, if any, for an application for ascertainment of mesne profits and to pass a final decree is concerned, it is only a question of procedure and not one of jurisdiction. In view of all these relevant factors, and the fact that the subject-matter is of general importance, and in order to set the matter at rest, an authoritative decision of our High Court is needed.

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5. (1976) 1 M.L.J. 385.

6. (1982) 2 M.L.J. 461.

BOOKS REVIEW.

1. MULLA - PRINCIPLES OF HINDU LAW. Fifteenth Edition by *Sunderlal T. Desai*, 1982. Publishers: N. M. Tripathi Private Limited, Bombay. Price Rs. 140.

Bentham thought that codification should serve as a complete digest of the law on the concerned subject and cause the debates of lawyers and the bad laws, of former times to be forgotten, and commentaries, if written, should not be read. There is also the story of a country where no law could have more words than the number of alphabets in its language which was but two and twenty and to write a commentary on any law was a capital crime. Hindu law, since 1955-56, is in large part codified with an "undetermined residue" consisting of rules derived from the Sastras and Commentaries, custom and judicial interpretation. Ancient traditions and modern thought wade side by side. The crisp directive of the Privy Council that under the Hindu system of law clear proof of usage outweighs the written text of the law still holds good and the constitutional directive as to enactment of uniform civil law applicable to all citizens remains a dream.

Mulla's exposition of the principles of Hindu law has been considered over the years as entitled to great respect and weight both by the Bench as well as the Bar for the accuracy of its enunciations and the simplicity of its style. To sustain the prestige gathered by the book is not an easy task for the Editor of each successive edition. It is gratifying that, by and large, the level of the earlier editions has been fully maintained in the present edition as well.

At page 84 it is stated with reference to Khojas and Cutchi Memons that hereafter they will be governed regarding inheritance and succession by the Muslim personal law except where the question relates to agricultural lands. It would have been helpful if in that context, the impact of the Supreme Court decision in *Controller of Estate Duty* v. *Abdul Sattar*, A.I.R. 1972 S.C. 2229, distinguishing between the concepts of "succession" and joint family tenure with its rule of survivorship, on a claim by Cutchi Memons in South India to retain the joint family tenure even after the passing of the Cutchi Memons Act, 1942, had been examined. In the discussion relating to the scope of the expression "taking advantage of his own wrong" in section 23 (1) (*a*) of the Hindu Marriage Act, there seems to be no advertence to the difference of opinion among the High Courts and the decision in *Soundarammal* v. *Sundara Mahalinga Nadar*, (1980) 2 M.L.J. 121, holding that section 23 (1) (*a*) can still be invoked when a defaulting spouse institutes proceedings under section 13 (1-A) in spite of the fact that such a party has been enabled to seek the relief of divorce after lapse of the statutory period, which means, in other words, that "where a husband's wrong, misdemeanour or matrimonial offence originating before the judicial relief that founds the petition under section 13 (1-A) continues unabated during the year so that resumption of cohabitation is prevented by him (with or without specific intention on his part to that end) he cannot turn that judicial relief into the first stage of divorce in his own interest". At page 1089 in dealing with the overriding effect of section 4, of the Hindu Adoptions and Maintenance Act, it is observed that no illatom adoption can be made after the Act came into force. The Andhra Pradesh High Court, by a Bench decision, has laid down just the contrary conclusion [see *Rami Reddy* v. *Special Tahsildar*, (1980) 1 An.. W. R. (N.R.C.), page 5]. Apart from such points, the instant book is an extremely helpful and welcome publication.

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2. J. P. AGGARWALA'S PLEADINGS IN INDIA: Principles and Precedents with 1100 Model Forms, 2nd Edition, in two volumes. [Published by Delhi Law House 77, Gokhale Market, Delhi-110 054.] Vol. I, 1983. (Price Rs. 125).

'Pleading' in the present context, somewhat broadly stated, has reference to the statements of the parties in a law suit as distinguished from advocating a client's cause *viva voce* in Court. As Holland pithily points out, with pleadings is set in motion the machinery of

the Court so as to procure a decision. Way back, Jessel M. R. pointed out. "The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules relating to pleadings was to prevent the issue being enlarged which would prevent either party from knowing when the cause came on for trial what the real point to be discussed and decided was. In fact the whole meaning of the system is to narrow the parties to definite issues and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing" [*Thorp* v. *Holdsworth*, (1876) 1 Ch. D. 637, 639]. The importance of pleadings cannot be overemphasised. Drafting of pleadings has become a fine art. The Civil Procedure Code rules and other ancillary rules are no doubt designed to find out and narrow down the controversy between the parties. Mere theory cannot however help much without more practical assistance. The main defects exposed in regard to pleadings are prolixity, argumentativeness and mention of immaterial facts clouding the real nature of the case set up. Again pleadings now-a-days cover a vast area of operation. Apart from plaints and written statements under different enactments, pleadings in writ petitions and other petitions including election petitions have to be drafted; likewise petitions to be presented before various Tribunals fall to be prepared. So practical guidance on the matter is a desideratum. A dependable book on the subject becomes an indispensable tool to the practising lawyer.

The instant book attempts to supply the basic guidelines both in the matter of principles and in the matter of model forms. Since it is essential that before drafting a pleading the law applicable has to be correctly apprehended explanatory notes of the relevant law have also been added to the precedents provided. The subject has been covered in 2 parts. Part 1 consists of 3 Chapters under the captions; Preliminary; Suits of particular kinds; Particulars of Pleadings; Necessary parties; Classes of Parties; Cognizance of a suit of civil nature; Plaint; Valuation; Written Statement; Appeals; Third Party Procedure and Costs. Part II provides Model Precedents. The model forms come to about 1100. What could be handed down in a single volume earlier has in this edition taken 2 volumes in view of increasing case law. The forms given relate to pleadings in civil and criminal cases, in taxation matters, in matters before various Tribunals, Company Law Board and writ jurisdiction of the High Courts, in matters like the Elections Laws, Labour and Industrial Laws etc. All important cases till to date seem to have been taken note of. The book is a useful publication and would serve well the practising lawyers.

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3 AND 4. CONSTITUTIONAL LAW OF INDIA by *T. K. Tope*. [Publishers: Eastern Book Company, 34, Lalbagh, Lucknow-226 001.]. 1982. Price Rs. 75.

CONSTITUTION OF INDIA by *V. N. Shukla*, Seventh Edition revised by *Dr. D. K Singh*. [Publishers: Eastern Book Co., Lucknow.] 1982. Price Rs. 90.

Woodrow Wilson once stated: "A Constitution is a vehicle of life; its substance is the thought and habit of the nation. Living political constitutions must be Darwinian in structure and in practice". It has to be resilient and its interpretation should reflect the spirit of the times. The Indian Constitution has come in for admiration as well as criticism: It has been amended forty-seven times during the last 33 years. A spate of legislation has been enacted since Independence both at the Union as well as State levels. Judicial activism has been to the fore particularly during the last few years. The Supreme Court in the *Menaka Gandhi Case*, (1978) 2 S.C.J. 312, has hinted at the concept of 'due process of law' and the concept of 'unenumerated rights'. In the words of Bhagwati, J., the case has opened up a new dimension of Article 14 which transcends the classificatory principle (*Bachan Singh case*, (1982) 2 S.C.J. 387, 399). In the *Judges' Transfers case*, A.I.R. 1982 S.C. 149; the Supreme Court has widened the scope of *locus standi*. In the *Minerva Mills Case*, (1980) 3 S.C.C. 625; it has accepted the principle of harmonious, construction between fundamental rights and directive principles. The decision in the *Dhillon case* has refashioned the entire approach to

the relationship between Lists I and II in the Seventh Schedule to the Constitution and imparted a new dimension to the residuary power of Parliament. Again in a series of cases—*Sunil Batra case, Francis Mullen case, etc.* legal aid, speedy trial and the right to human dignity have been read into Article 21. Books on Indian Constitutional Law necessarily expound and convey the latest position and are therefore eagerly looked forward to.

Both the instant books come from the same publisher. Both are of the same year. The one presents the Indian Constitutional law topic wise; the other purveys it in the form of commentaries. Their approach also is different.

Professor Tope's book though primarily intended for lawyers and law students is designed to appeal equally to teachers and students of political science. To Prof. Tope the Indian Constitution is both a legal and a social document. To him for a proper appreciation of the Constitution a mere study of its provisions in the light of subsequent legislation enacted and the judicial decisions interpreting the constitutional provisions is not enough; one has to study the political and social consequences of its working as well. He quotes Rajaji's observations in 1920, in Jail Life. "We all ought to know that Swaraj will not at once or I think even for a long time to come be better Government or greater happiness for the people. Elections and their corruptions, injustice and power and tyranny of wealth will make a hell of life as soon as freedom is given to us........ Hope lies in universal education by which right conduct, fear of God and love will be developed among the citizens from childhood. It is only if we succeed in this that Swaraj will mean happiness, otherwise it will mean the grinding injustice and tyranny of wealth". Prof. Tope feels that the apprehensions expressed by Rajaji are to some extent true. He has made pointed references to problems which have come to assume new political dimensions like the Presidential form of Government, defections in the legislature, Centre-State relations etc. He reminds us of the Supreme Court's observation in *State of West Bengal* v. *Union of India,* A.I.R. 1963 S.C. 1241, that ours is "a Constitution which was not true to any traditional pattern of federation". The texts of the recent amendments to the Constitution from the 42nd to the 45th are given. The whole subject of Constitutional law is covered in 38 chapters. The 36th is devoted to "Emergency and its aftermath". The 37th discusses the question "Is Parliamentary democracy suited to India". The author expresses his views freely. His assessment in the 36th Chapter of the opposition party is marked by a certain amount of political bias. Statements like: "(In 1972) Shrimati Indira Gandhi became Prime Minister of India. The opposition parties, both inside the Parliament and outside, however decided to obstruct the functioning of democracy. Systematic attempts were made to create chaos in the country"; "Shrimati Gandhi had no alternative but to use the constitutional powers of the Government under Article 352 in order to meet the situation"; "The Janata party pursued a policy of harassment of Shrimati Indira Gandhi during the period of 27 months the party was in office" etc. Prof. Tope has at every stage given useful suggestions to meet the various problems surfacing in the working of the Constitution. The book makes very interesting reading throughout.

Prof. V. N. Shukla's book is cast in a different mould. It provides a compact and accurate summary of the principles underlying the Constitution in the light of the leading decisions. Though projected in the form of a commentary of the Articles it gives a coherent and integrated picture of the constitutional provisions. The stress is on the theoretical aspect of the law without any reference to sociological interpretation or social interplay of Constitutional issues. The author's own views are subued and there is no attempt to push in particular ideologies. In his Preface to an earlier edition, the Revising Editor Dr. D. K. Singh had observed: "The discussion is pitched at an academic level with a view to initiate the student to appreciate problems of constitutional interpretation, train his mind to identify and analyse the conceptual structure and learn the science of law to reach logical conclusions." The commentaries are in simple style. Statements at places compel attention; for instance, "Judgments by themselves do not violate fundamental rights (page 204); directive principles are "active obligations of the State" (page 212); "they should serve as a code of interpretation" (page 214). The

present edition incorporates into the text of the Constitution amendments up to the forty-fifth. Appendix I contains the latest constitutional amendments from the 38th to the 46th, Appendix II contains supplementary legislative enactments like The Fifth Schedule to the Constitution (Amendment) Act, 1976; The Parliamentary Proceedings (Protection of Publication) Act, 1977 and the National Security Act, 1980. All the important decisions rendered since the last edition interpreting the provisions of the Constitution have been taken into account. The instant book is a welcome publication. It is a reliable exposition of the Indian Constitution.

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5. COMMENTARIES ON INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946 by *Kirpa Dayal Srivastava*, Second Edition, 1982. [Publishers: Eastern Book Company, Lucknow.] Price Rs. 95.

The Constitution has expressed a deep concern for the welfare of workmen. Article 42 provides that the State shall make provision for securing just and humane conditions of work. The Industrial Employment (Standing Orders) Act was specially designed to define with some precision and secure reasonable conditions of service in industrial establishments instead of leaving them *ad hoc* or depending on oral arrangements which left the employees at the mercy of the employer. The scheme of the Act requires that in industrial employments employing hundred or more workmen the employer should submit to the Certifying Officer, a quasi-judicial authority draft Standing Orders, that is, the Rules relating to the matters set out in the Schedule" to the Act proposed by him for adoption in his industrial establishment and get them certified by such Officer. This is mandatory. The Supreme Court observed regarding the Act that it is "an Act specially designed to define the terms of employment of workmen in industrial establishments, to give the workmen a collective voice in defining the terms of employment, and to subject the terms of employment to the scrutiny of quasi-judicial authorities by the application of the test of fairness and reasonableness" (*U.P. State Electricity Board* v. *Hari Shankar Jain*, (1979) 1 S.C.J. 59). The Industrial Employment Standing Orders, are therefore the Bible as it were of industrial relations. Though the Act covers only industries having hundred or more persons, the framework of the Standing Orders under the Act is basically limited leaving large range of terms and conditions of employment outside the scope of the Act. Nevertheless the structure of the Act assures the basic needs of the employees. The progressive rise of small industries would suggest it is desirable that the Act should be amended so as to cover these industries as well where for instance more than 20 or 25 persons are employed.

The book under notice provides a sectionwise commentary on the Act. In the commentary under the caption Model Standing Orders elaborate notes have been provided on 'misconduct' and matters relating to domestic enquiry. The topics of victimisation, unfair labour practices, recognition of unions etc., have also been competently discussed. The book is divided into three segments. The first comprises the Act with the commentaries. The second gives the Industrial Employment (Standing Orders) Central Rules, 1946. The last one contains the Rules framed under the Act by the States: (*i*) The Andhra Pradesh Industrial Employment (Standing Orders) Rules, 1953; (*ii*) The Bombay Industrial Employment (Standing Orders) Rules, 1959 (Gujarat); (*iii*) The Karnataka Industrial Employment (Standing Orders) Rules, 1961; (*iv*) The Kerala Industrial Employment (Standing Orders) Rules, 1958; (*v*) The Madhya Pradesh Industrial Employment; (Standing Orders) Rules, 1963; (*vi*) The Bombay Industrial Employment (Standing Orders) Rules, 1959 (Maharashtra); (*vii*) The Industrial Employment (Standing Orders) Punjab Rules, 1973; (*viii*) The Rajasthan Industrial Employment (Standing Orders) Rules, 1964; (*ix*) The Tamil Nadu Indsutrial Employment (Standing Orders) Rules, 1947; and (*x*) The Uttar Pradesh Industrial Employment (Standing Orders), Rules, 1946. The commentaries are lucid and analytical taking into account the leading judicial decisions. The inadequacies and lacunae exposed in the working of the provisions of the Act have been indicated. The suggestion has been made in the present edition that there should be two types of Model Standing Orders—one

for industrial units employing fifty or more workmen and the other for units employing less than fifty workmen and that small units should be exempted from certifying their Standing Orders and the Model Standing Orders should be made automatically applicable to them. The book would be of much assistance to lawyers, employers, trade unionists and social welfare workers.

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6. DR. SIR HARI SINGH GOUR'S PENAL LAW OF INDIA, 10th Edition in 4 Volumes, Vol. I (Sections 1 to 120 of the Indian Penal Code, 1982). [Publishers: Law Publishers, Sardar Patel Marg, Allahabad-211001]. Volume 1, Price Rs. 150.

The present edition is the diamond Jubilee edition of the book. It has stood the test of time with distinction since its first appearance. The Indian Penal Code is of ancient vintage and is more than 120 years old. Its provisions favour individual rights to property and their sanctity. Even the sections relating to offences against women seem to proceed on the theory of property. Ideas, ideologies and attitudes have undergone radical transformation since the enactment of the Code. The Constitution of India also has made a profound impact on the notions underlying the Code. Three Articles of the Constitution in particular, Articles 14, 19 and 21 have breathed vitality in the concept of the rule of law, forming "a golden triangle" in the felicitous language of Chandrachud, CJ., in the *Minerva Mills case*, A.I.R. 1980 S.C. 1789. Article 14 has been held to enact primarily a guarantee against arbitrariness and inhibit State action whether legislative or executive which suffers from the vice of arbitrariness. It is plain and indisputable that under the Constitution law cannot be arbitrary or irrational and, if it is, it will be clearly invalid. It was on this ground that quite recently section 303 of the Code was struck down. Again, at the present time, death penalty under section 302 can be awarded only in the "rarest of rare cases" and for special reasons alone. Though a thorough overhauling of the Code provisions and far-reaching amendments thereto have been discussed for a number of years, it looks as if it may take some more time. It is interesting to note in this connection that Dr. Gour was not an indiscreminating admirer of the Code. He had observed: "That as a Code, it is by far the most important piece of the Indian legislation cannot be questioned. But that it requires a thorough revision by an expert committee of lawyers is equally indisputable .... As it is, the Code sorely needs rearranging of its many sections which would seem to have been juxtaposed for no reason other than a merest chance. Many provisions of the Code overlap one another. And while many sections are pedantically precise, others are bald and leave much to the ingenuity of construction". (Introduction p. 15).

It is a merit of Dr. Gour's book, that he always sought to get at the general principles of criminal law instead of being snowed under the avalanche of case law, English and Indian. This feature is maintained through the successive editions. A synopsis in provided under each section. The comments are luminous and comprehensive. In the endeavour to prune case law some important decisions seems to have been missed and occasionally gone out of ken. Thus in regard to the starting point of limitation under section 70 of the Code, the Supreme Court decision in *Mahtab Singh* v. *State of Uttar Pradesh*, A.I.R. 1979 S.C. 1263, that what the section means is that within six years the State must commence proceedings for realisation, not complete it; and when the party secures a stay against a State and prevents it from levying the fine it is violative of commonsense and law to hold that the fine itself is therefore irrecoverable because of limitation—is not visible in the comments under the section. The book under notice will be highly useful to the members of the Bench and the Bar alike as well as to students of criminal law and penology.

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7. LAW OF SUSPENSION BY *M. S. Nila.* [Publishers: Eastern Book Company, Lucknow-226001] 1982. Price Rs. 20.

The book under notice concerns itself only with suspension of public or Government servants. The Government has inherent power of suspending its servant pending departmental inquiry. It is just for facilitating the inquiry. It is not necessary to follow the procedure in

Article 311 of the Constitution for issuing an order of suspension. Suspension of a Government servant is neither dismissal nor removal from service. The Government servant under suspension is and continues to be a Government servant. The real effect of suspension is that during that period he is not permitted to work and is paid only a subsistence allowance which is far less than the salary and allowances he could have been entitled to but for the suspension. Further during the period of suspension the Government servant cannot seek employment elsewhere, nor can the Government employ another person in his place. There is however a popular feeling that some stigma attaches to a suspended person. It is not viewed only as a first step in a disciplinary action.

The book under notice focuses attention providing full details on the various aspects of the law relating to the suspension of public servants. The subject is considered in two parts. Part I comprising 12 chapters deals with the meaning, nature and consequences of suspension. Part II provides a commentary on Statutory Rules on suspension. These Rules are the All-India Services (Discipline and Appeal) Rules, 1955 and 1969, and the Central Services (Classification, Control and Appeal) Rules, 1957 and 1965. In the Introduction the author observes. "Suspension always reflects upon the conduct of the person suspended and results in loss of reputation which continuously pricks his mind." Whatever be the legal position there is no gainsaying that the public looks upon suspension as tarnishing the concerned person's image. The author has taken note of the leading judicial decisions in his exposition. The book carries a Table of Cases as well as a Subject Index and is complete in every respect. The author has treated the subject analytically in easy style and his comments are dependable. The book will be highly useful to public servants as well as to persons in the administrative machinery.

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8. R. N. SAXENA AND GAUR'S LAW OF ARMS AND EXPLOSIVES, 4th Edition, 1982. [Published by Law Publishers: Allahabad-211001]. Price Rs. 100.

The year 1857 is unique in the annals of Indian history. The happenings of that year made a deep impact on the British administrators of the country in regard to internal security due to uncontrolled possession and transport of fire-arms. There was a large mass disarmament as it were and a system of licensing was introduced. The Indian Arms Act (XXXI of 1860) was enacted. The law relating to arms in its true and proper form as the first real law is to be found in the Act of 1860, which subsequent legislations have developed. The present Arms Act was passed in December, 1959, and came into force on the 1st October, 1962. It retains many features of the 1860 Act "not detachable from the overall demands of public security and maintenance of public order". The grant or refusal of licences is still an administrative matter. On the question of liability arising out of "possession" of arms and ammunition, the doctrine of constructive liability has been introduced thereby making the law more stringent. While the Arms Act is a comprehensive measure covering all aspects connected with arms, ammunition and military stores, the Explosives Act of 1884 prohibits the manufacture, transport and import of explosives except under a licence and provides for search, seizure, arrest, prosecution and penalties. The Explosive Substances Act of 1908 was enacted to meet certain situations which could not be properly, conveniently and adequately dealt with under the other two enactments, for instance, those arising out of terroristic activities involving the use of explosives. The Act of 1908 is an independent Act by itself. This trilogy of Acts along with the Rules framed thereunder constitute the law of arms and explosives designed to secure the safety and security of the country. It is well-known that over the years criminals have taken to using highly sophisticated lethal weapons and firearms in committing dacoities, murders, bank robberies, holdup on public roads, looting of buses and trains etc. These are sufficiently alarming but concern more the adequacy of the law, the effectiveness of its administration and the efficiency of the machinery for protection of law, order and public security.

The book under notice is a commentary on the Arms Act, the Indian Explosives Act and the Explosive Substances Act along with Rules. The notes are copious and section-wise. Synopsis is provided for the sections and leading cases up to date have been taken into

account. The book is split into two parts. The first part contains the commentary and the second part contains the Rules relating to Arms, and Explosives. The basic principles are clearly stated. The book is bound to be highly helpful to the Bench and the Bar, to the concerned Government departments, police personnel and others.

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9. COMMENTARIES ON THE CUSTOMS ACT, 1962 BY *P. L. Malik*. Third Edition, 1982. [Publishers: Eastern Book Company, Lucknow-226001]. Price Rs. 85.

Customs revenue forms a bountiful source of income to the Central Exchequer. It is linked up with the country's economy. The vast expansion in trade has invested customs administration with great importance. The law relating to customs stands necessarily interlinked with exports and imports, foreign exchange regulations, prevention of smuggling etc. The Customs Act, 1962, is a consolidating and comprehensive legislation replacing earlier enactments like the Sea Customs Act, 1878 and the Land Customs Act, 1924. Far-reaching amendments were made in 1980 bringing about a thorough overhaul in the provisions of Chapter XXIV (sections 128 to 131-C) of the 1962 Act by section 50 and V Schedule to the Finance Act (No. 2), 1980. The provisions regarding appeals and revisions were recast and a new forum, the Customs, Excise and Gold Control Appellate Tribunal has been set up. Provision has also been made for reference of questions of law to the High Court and Supreme Court. A right of appeal from decisions of the High Court on such references to the Supreme Court is also conferred.

The instant book provides a section-wise commentary of the Act. Synopsis headings are given under the sections. There are 9 appendices. Appendix I furnishes the Rules and Regulations with Forms arranged section-wise Appendix II sets out the Notifications issued under the Customs Act, 1962. Appendix III gives Miscellaneous Forms under the 1962 Act. Appendix IV contains the Notifications and Forms made under the Land Customs Act, 1924. Appendix V refers to Import of gifts, appendix VI to Import of goods, personal baggage, and gifts, appendix VII to Export Baggage Rules, and appendix VIII to Import of cars, scooters, station-wagons, jeeps, motor cycles, auto-cycles, mini-cars and mopeds, Appendix IX is devoted to List of Regional Licensing Authorities and jurisdiction. The Appendices collectively furnish most of the materials needed to economise time and labour of lawyers and businessmen in solving many of their day-to-day problems.

Though many leading decisions have been taken into account and the citations are claimed to be up to 1st July, 1982, some noteworthy cases seem to have been overlooked or bypassed; such as *Jayantilal Katakia* v. *Govindan Nair,* A.I.R. 1981 S.C. 1196, deciding that where both the licencee and another person were found guilty of trafficking in licence, the punishment imposed on one should not be glaringly disproportionate to the punishment imposed on the other; *Abubakar* v. *Secretary,* (1981) 2 M.L.J. 450 holding that where before the proceedings under section 18 (2) of the departmental authorities are terminated finally the criminal Court had acquitted the petitioner on merits he cannot be penalised; *Jain Shud Vanaspati Ltd.* v. *Government of India,* 1980 Cen. Qrs. 570 laying down that section 47 attaches finality to the satisfaction of the officer that the goods are not prohibited and such finality cannot be disturbed unless the Department shows fraud or deliberate suppression; *Standard Batteries Ltd.* v. *Appraiser,* 1981 Tax.L.R. 2792, stating that refund of excess duty paid on the basis of a wrong classification of an item by the mistake of the authority can be successfully claimed under section 27 (*b*) provided that the excess so paid had not been passed on to the consumers. It is however true that opinions may differ even in the matter of judicious selection of cases.

The book under notice is a handy volume on the Customs Act; the exposition is lucid and objective. It is bound to be helpful to lawyers and others interested in the subject.

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10. EQUITY, TRUSTS AND SPECIFIC RELIEF BY *B. M. Gandhi*, 1983. [Publishers: Eastern Book Co., Lucknow]. Price Rs. 45.

Equity is the spirit of justice which enables the interpretation of laws rightly, softening their rigidity and stiffness. It represents, what sometimes is referred to, as the conscience of law, a moral correction of law in order to accord more with justice and fairness. The Hindu sages have recognised the concept calling it "yuktivichara". Abu Hanifa the Muslim jurist calls it "istihsan" or juristic equity. The emergence of equity in England was due to the incompleteness of the common law. It developed as a separate jurisdiction providing remedies where the common law had none or no effective remedy. In the words of Snell "what had begun as an irregular process of petitioning the Crown in extraordinary circumstances had become a regular system of Courts with a recognised jurisdiction" (Principles of Equity, p. 10). Unlike in England where the fusion of law and equity jurisdictions was brought about by the Judicature Act of 1873 there never were in India separate Courts administering equity. In this country every Court is a Court of equity as well as law and principles of equity developed as part of law in the same system. Guidance is sought from the English rules of equity generally. There are about a dozen maxims or working principles of equity: (1) Equity will not suffer a wrong to be without a remedy: (2) Equity follows the law. In the words of Maitland equity does not destroy the law but fulfils the law. (3) He who seeks equity must do equity. (4) He who comes into equity must come with clean hands. (5) Delay defeats equity. (6) Equality is equity. (7) Equity looks to the intent rather than the form. (8) Equity looks on that as done which ought to be done. (9) Equity imputes an intention to fulfil an obligation. (10) Where the equities are equal the law shall prevail. (11) Where the equities are equal, the earlier in time shall prevail. (12) Equity acts *in personam*.

The institution of Trusts is one of the significant contributions of equity to the British legal system. In India the Indian Trusts Act, 1882 deals with trusts. Again as is often stated one of the most striking characteristics of equity has been its inventiveness in providing a diversity of remedies. Grant of specific relief is one such instance. In India the guidance is provided in the form of legislation, namely, the Specific Relief Act, 1963.

The instant book is divided into four parts, comprising twenty-three chapters. Part I deals with the nature of equity, its history, Courts and important maxims in their operation. Part II concerns itself with specific equities, equitable doctrines, equitable rights etc. Part III deals with Trusts with special reference to the Indian Trusts Act, 1882 and Part IV covers the principles relating to specific performance and other equitable remedies with special attention given to the Specific Relief Act, 1963. The author's approach to the subject is not on conventional lines. He cites with approval John G. Fleming's statement that a book should be "more function-oriented than many of its competitors, more concerned with the effect and operation of legal rules, with their aims and reason than with mechanistic problems of internal consistency of decisions within the framework of any given system". As Bhagwati, J., observes in the *Minerva Mills case*, (1980) 3 S.C.C. 625, 631: "the doctrine of stare decisis should not be regarded as a rigid and inevitable doctrine which must be applied at the cost of justice. There may be cases where it may be necessary to rid the doctrine of its petrifying rigidity". The author has dealt with the subject in a systematic and comprehensive manner in the light of leading decisions, English and Indian. He neatly adverts to fine situations as where he states: "no satisfactory definition of trust is available and more so when we know that contrary to the general law there may be trustees of a trust even though no property is vested in them, as is often the case with Settled Land Act trustees (p. 236) or where he says "bankruptcy of a trustee is as a general rule, a ground for his removal, but bankruptcy *ipso facto* does not discharge him from his office. He remains competent to work unless he is removed by the Court (p. 391). In a book of great merit like the present one there should be no scope for expressions like "more wider" (p. 307). The instant book is a fine and scholarly exposition of the subject written in lucid style. It is a welcome publication.

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duties an administrator should always remember the great saying of the Tamil Saint Tiruvalluvar *:

Do nought that soul repenting must deplore,

If thou hast sinned,' tis well if thou dost sin no more.

(Let a minister never do acts of which he would have to grieve saying. "What is this I have done, (but) should he do (them), it were good that he grieved not.) (No. 655 in Tirukkural : Translation by Rev. Dr. G. U. Pope and others (Reprint 1970) p. 175.)

51. An administrator's actions should be such as he is not driven to repent for the mistakes he may have committed. But if he has committed any mistakes in the past he should try to avoid a repetition of such mistakes. It is significant that in Tamil language the equivalent of the word 'people' is 'Makkal' which is also sometimes used as the equivalent of 'children'. It is for the State Government to consider what can be done to those who fail in the petitions. This observation is made particularly in regard to those who were recruited after 16th December, 1970, under the Rules made under the proviso to Article 309 of the Constitution in view of the fact that their recruitment was not made on the hereditary principle. Those who have passed S.S.L.C. examination amongst them come within the scope of the statement made by the learned Attorney General. But those who have merely completed S.S.L.C. examination but not passed it fall outside the scope of that statement even though they have gained experience while they were in office. We hope and trust that the State Government will look into this matter purely from a humanitarian point of view. This is only a suggestion and not a direction.

52. In the result the petitions are dismissed subject to the following :

(*i*) The State Government will give effect to the memorandum filed on its behalf which is incorporated in this judgment in the case of those who possess the minimum general qualifications prescribed under the Act and the Rules made thereunder and who were holding the posts of part-time village officers immediately before the Act came into force. The State Government shall re-employ all such persons who have not crossed the age of superannuation and who are selected as per the memorandum in the new cadre within four months from today. Until they are so selected, they will not be paid any remuneration. Even if they are re-employed, the amount paid to them pursuant to the interim orders will not be recovered from them.

(*ii*) The compensation, if any, payable by the State Government under section 5 of the Act to those who cease to be village officers shall be adjusted against the amount paid pursuant to the interim orders passed in these cases. The State Government will not recover from them any amount paid to them pursuant to the interim orders passed in these cases in excess of the compensation, if any, payable to them.

(*iii*) The interim orders stand vacated with effect from 15th April, 1982.

(*iv*) No costs.

V. K. —— *Petitions dismissed.*

[END OF VOLUME (1983) 1 M.L.J. (S.C.)]

* Matter in Tamil, omitted.